

IN THE MATTER OF: BRANDON SCOTT BAXLEY
Jonathan Keith on 10/29/2019

30(b)(6)

1 UNITED STATES BANKRUPTCY COURT
2 EASTERN DISTRICT OF NORTH CAROLINA
3 RALEIGH DIVISION
4 IN THE MATTER OF:)
5) Chapter 7
6 BRANDON SCOTT BAXLEY,)
7) Case No. 18-03406-5-DMW
8 Debtor)
9
10

11 DEPOSITION
12 OF
13 BAXLEY CORPORATION, LLC, BY AND THROUGH ITS
14 30(B)(6) DESIGNEE,
15 JONATHAN KEITH
16 October 29, 2019 - 9:05 a.m.
17 Raleigh, North Carolina
18
19
20

21 Reported By: Lisa A. Wheeler, RPR, CRR
22
23
24
25

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This is the deposition of BAXLEY CORPORATION, LLC, BY AND THROUGH ITS 30(B)(6) DESIGNEE, JONATHAN KEITH and JONATHAN KEITH, INDIVIDUALLY, taken pursuant to Notice of the parties and in accordance with the Federal Rules of Civil Procedure before Lisa A. Wheeler, RPR, CRR, in the offices of the U.S. Bankruptcy Administrator, 434 Fayetteville Street, Suite 640, Raleigh North Carolina, on the 29th day of October, 2019, beginning at 9:05 a.m.

The reading and signing of this transcript is reserved.

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1 P R O C E E D I N G S

2 Whereupon,

3 JONATHAN KEITH,

4 having been first duly sworn, was examined
5 and testified as follows:

6 EXAMINATION

7 BY MR. OLIVER:

8 Q. Mr. Keith, we met a couple minutes ago.
9 I'm George Oliver. I'm representing the trustee
10 in this matter, Mr. Holmes Harden. And can you
11 please give your full name for the record.

12 A. Jonathan Maxwell Keith.

13 Q. All right. Thank you for coming today.
14 You're being deposed in your individual capacity
15 and also on behalf of Baxley Corporation --

16 A. Uh-huh.

17 Q. -- is that right?

18 A. Right.

19 Q. Okay. As I ask you questions, if the
20 answer's different for you individually than
21 answering on behalf of the company, please let me
22 know that. And some of my questions will only
23 relate to the company, but I'll try to keep it
24 clear if you will, okay?

25 A. Okay.

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1 Q. Have you ever been deposed before?

2 A. Yes.

3 Q. Okay. How many times?

4 A. Once or twice. Twice.

5 Q. Okay. Recently?

6 A. No.

7 Q. Okay. This will probably be similar to
8 that. I'll ask questions, you'll answer them,
9 we'll try not to talk over each other, and we'll
10 all try to use verbal answers.

11 A. Uh-huh.

12 Q. Like that.

13 A. Yes.

14 Q. Yeah.

15 A. Yes.

16 Q. There you go. Exactly. Sometimes that
17 gets hard in a conversation so we just need to
18 try to be aware of it and I may remind you from
19 time to time. I'm not trying to be rude, but it
20 does help our court reporter, okay?

21 A. Yes.

22 Q. Great. If you need a break for any
23 reason at any time, please let me know. I'd just
24 ask that you answer whatever question that's been
25 asked so that I don't lose my place --

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1 A. Sure.

2 Q. -- okay? Are you -- have you taken any
3 medicine or any sort of substance that might
4 impair --

5 A. No.

6 Q. -- your ability to testify today?

7 A. No.

8 Q. Okay. So how long have you known
9 Brandon Baxley?

10 A. Since we were children.

11 Q. Okay.

12 A. Probably three or four.

13 Q. And how old are you now?

14 A. 47.

15 Q. So about 45 years?

16 A. Yes.

17 Q. Okay. You guys grew up in the same
18 town?

19 A. Yes.

20 Q. How long have you worked together?

21 A. Just over three years, I believe.

22 Q. Okay. And that's with Baxley Corp.?

23 A. Yes.

24 Q. When I say Baxley Corp., it's Baxley
25 Corporation, LLC? Is that the full name?

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1 A. Yes.

2 Q. Okay. So what did you do before you
3 started working for Baxley Corp.?

4 A. Been in construction for a lot of
5 years, had -- but at the time, I had gone into a
6 restaurant with my father and got out of that and
7 decided then -- decided to come to work with the
8 Baxleys.

9 Q. Okay. What restaurant did you work
10 with?

11 A. It's in Fayetteville. My father and I
12 had a biscuit place, Biscuit -- Biscuit Kitchen.

13 Q. Okay.

14 A. Yeah.

15 Q. Is that still open?

16 A. It's not.

17 Q. Okay. So when you came to work for the
18 Baxleys, what was your role?

19 A. Predominantly estimating. Estimating,
20 project manager.

21 Q. What sort of projects did you estimate?

22 A. At the time, a lot of tree work, some
23 smaller construction projects.

24 Q. That was when you started three years
25 ago?

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1 A. Yes.

2 Q. What other sort of business
3 relationships have you had with Brandon Baxley?

4 A. Just this.

5 Q. Just Baxley Corp.?

6 A. Yes.

7 Q. So you started three years ago as an
8 estimator. And what other roles have you had
9 with Baxley Corp.?

10 A. Project manager and estimator up until
11 he was -- he asked me to step up and -- and take
12 over as a management role, which I don't recall
13 the date off the top of my head. You -- I mean,
14 you got -- we -- I think that's been -- I want to
15 say spring year and a half ago. Spring maybe.

16 Q. Spring of 2018?

17 A. I believe so.

18 Q. Okay. When you say a management role,
19 what is your role?

20 A. I still estimate, sell most of the
21 jobs, deal with engineers and issues in the
22 field, direct the crews and, you know --

23 Q. What's your title?

24 A. -- make key decisions. Manager.

25 Q. Manager with a capital M?

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1 A. Yes.

2 Q. You're the manager of the LLC?

3 A. Yes.

4 Q. Are you also the manager of the
5 business?

6 A. Yes.

7 Q. Are there any other managers of the
8 LLC?

9 A. Rudy and Ginger as well.

10 Q. Okay.

11 A. Rudy Baxley and -- and Ginger Baxley,
12 Martha Baxley.

13 Q. Okay. In the spring of 2008 when you
14 became manager with a capital M, did your role
15 change at that point from what it had been
16 before?

17 A. Considerably.

18 Q. Okay. And you gave -- you said you had
19 been an estimator/project manager before.

20 A. Uh-huh.

21 Q. You still do those things?

22 A. Yeah. Yes.

23 Q. And the additional duties that you just
24 listed for me is what changed in the spring of
25 2018?

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1 A. Uh-huh.

2 Q. Sorry.

3 A. Yes.

4 Q. Okay. You had not done any of those
5 duties prior to spring of 2018?

6 A. No.

7 Q. Who had done those duties prior to
8 spring of '18?

9 A. Brandon Baxley and Martha and Rudy.

10 Q. How do you know that Brandon Baxley had
11 those duties prior to spring of 2018?

12 A. I dealt with him on a daily basis.

13 Q. How do you know that Martha had those
14 duties before spring of 2018?

15 A. I dealt with all three of them on a
16 daily basis.

17 Q. So on a daily basis --

18 A. A weekly basis at least I would hear
19 from -- from any -- any one of them.

20 Q. Okay. So you dealt with Brandon on a
21 daily basis. Did you deal with Martha on a daily
22 basis?

23 A. Key decisions I would -- Martha
24 would -- I'd speak to Martha weekly, sometimes
25 twice a week.

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1 Q. And how about Rudy?

2 A. About the same.

3 Q. Do you have more or less interaction
4 with them on these decisions now that you're a
5 manager than you did before spring of 2018?

6 A. More.

7 Q. Okay. So now instead of talking to
8 Martha weekly or twice a week and Rudy weekly or
9 twice a week, how often --

10 A. Rudy daily.

11 Q. -- do you talk to them now?

12 A. Martha two, three times a week, some
13 weeks daily. It just depends on what the -- what
14 the workload is and what we're dealing with.

15 Q. And how often do you talk to Brandon
16 Baxley about those key decisions?

17 A. These days, very little.

18 Q. You don't still talk to him on a daily
19 basis?

20 A. I talk to Brandon about -- Brandon is a
21 project manager now and handles scheduling, so
22 I'm in contact with him but not on -- not in that
23 role.

24 Q. So you're saying that your change to be
25 the manager with a capital M was not just a

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1 change in title but a change in the role and the
2 relationship between yourself and Brandon?

3 A. Yes.

4 Q. And that happened in spring of 2018?

5 A. I believe so, yes.

6 Q. So as of spring of 2018, you no longer
7 took direction from Brandon?

8 A. No.

9 Q. On any issues?

10 A. No. No.

11 Q. And before spring of 2018, you did take
12 all your direction from Brandon?

13 A. Not all of my direction from Brandon
14 but --

15 Q. The only direction you took from anyone
16 other than Brandon before spring of 2018 was
17 Martha and Rudy?

18 A. Yes.

19 Q. Okay. And since spring of 2018, you've
20 taken no direction from Brandon, but you have
21 taken direction from Martha and Rudy?

22 A. Yes.

23 Q. What joint ventures have you been in
24 with Mr. Brandon Baxley?

25 A. I don't recall being in any joint

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1 ventures with Brandon.

2 Q. What partnerships have you been in with
3 Mr. Brandon Baxley?

4 A. None.

5 Q. Okay.

6 (KEITH EXHIBIT 1, Letter to To Whom It
7 May Concern from Jonathan Keith, February 25,
8 2018, was marked for identification.)

9 BY MR. OLIVER:

10 Q. I'm going to mark this as Exhibit 1,
11 ask if you could review that.

12 MR. JANVIER: Thanks.

13 MR. OLIVER: Uh-huh.

14 BY MR. OLIVER:

15 Q. Do you recognize this document that
16 I've marked as Exhibit 1?

17 A. Yes.

18 Q. Is that your signature?

19 A. It is.

20 Q. And you had -- you say -- signed it in
21 front of a notary, Ms. Ruth Harrell?

22 A. Yes.

23 Q. This is dated February 25th of 2018.
24 You wrote this to the North Carolina Board of
25 General Contractors?

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1 A. Yes.

2 Q. Does this say that I've entered into
3 joint ventures and partnerships with him, him
4 being Brandon Baxley, in the past?

5 A. Yes.

6 Q. And this is dated February 25th of
7 2018?

8 A. Yes.

9 Q. So what -- what joint ventures were you
10 referring to?

11 A. I -- I don't know what I was referring
12 to at this time. It's a reference letter.

13 Q. What partnerships were you referring
14 to?

15 A. We had -- I don't -- I don't recall,
16 honestly.

17 Q. So you've never had a partnership or
18 joint venture with Brandon Baxley?

19 A. You know, there -- we had a -- I had a
20 food truck as part of the restaurant that I had
21 in Fayetteville --

22 Q. Okay.

23 A. -- that we had looked into entering
24 into, but it just kind of never -- didn't really
25 come to fruition. We had looked into working

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1 together on that, kind of a false start, I guess.

2 Q. You and Mr. Ba- -- Mr. Brandon Baxley?

3 A. Yes.

4 Q. And when was that?

5 A. Would have been in 2015 or '16.

6 Q. Is that what you were referring to in
7 this letter?

8 A. I would assume so.

9 Q. Did you write this letter?

10 A. I did.

11 Q. So when you wrote it, what were you
12 thinking about when you wrote those words?

13 A. I've -- I would assume I was
14 thinking -- thinking of that. I don't recall
15 exactly what I was -- what I was -- that would
16 have to be it, but --

17 Q. Okay. What was the name of that
18 business that you started with Mr. Baxley on the
19 food truck?

20 A. I don't know if it was even -- if there
21 was even an entity filed or not at this point.

22 Q. Do you remember what it was called,
23 though?

24 A. The food truck? I mean --

25 Q. The -- the business --

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1 A. I do not.

2 Q. -- the food truck --

3 A. I do not. I --

4 Q. -- whatever you -- whatever you want --

5 A. Like I said, it --

6 Q. -- to call it.

7 THE REPORTER: One at a time.

8 MR. OLIVER: Yeah.

9 BY MR. OLIVER:

10 Q. Whatever you want to call it. I
11 don't --

12 A. It was kind of a false start. I think
13 we -- I worked an event or two. We looked at
14 doing a partnership together on it and did not.
15 It just did not turn into anything.

16 Q. Did it have a name?

17 A. That's what I'm saying. I don't recall
18 that -- that there ever was an entity filed to
19 have a name.

20 Q. What did you call it when you did an
21 event? Did you have a name at all, any kind of
22 name?

23 A. It was -- the truck was still Biscuits
24 and Burgers, which was part of my restaurant in
25 Fayetteville.

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1 Q. Okay.

2 A. But as far as forming an entity
3 together, I don't know if that ever happened or
4 not. It was a period of probably less than 45
5 days that we...

6 Q. And that was in '14 or '15 -- '15 or
7 '16 I think you said?

8 A. '15 or '16.

9 Q. So was it called Raleigh Foods, LLC?

10 A. It's possible.

11 Q. Did you -- were you an -- one of the
12 initial five members of a company called Raleigh
13 Foods, LLC?

14 A. Like I say, I don't recall whether
15 that's the case or not.

16 Q. Who are the other people that were
17 involved in that?

18 A. I don't recall whether I was a -- a
19 part of that.

20 Q. If you were part of it, do you know who
21 else --

22 A. If I was --

23 Q. -- was involved?

24 A. -- part of -- yeah. I mean, I -- I --
25 I do not.

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1 Q. Do you know Sam Bradford?

2 A. I had a -- I do know Sam Bradford. I
3 had a -- was dealing with a brick and mortar
4 business that -- that was failing at the time and
5 had quite a bit on my plate, so I don't have a
6 lot of --

7 Q. Do you remember hiring R.J. Antonelli
8 to file with the Secretary of State a -- or
9 articles of organization for Raleigh Foods, LLC,
10 in September of 2016?

11 A. I don't think that I directed him per
12 se. If -- I'd have to look at it. I don't
13 recall, you know, whether -- like I say, I don't
14 recall whether there was an entity filed or not.
15 I'm assuming that that's it.

16 Q. Was Byrne Huddleston involved with it?

17 A. Yes.

18 Q. Okay. Can you --

19 A. I think that --

20 Q. -- remember anyone else that was
21 involved with it?

22 A. Byrne, Brandon, and -- and I, Sam,
23 maybe.

24 Q. And R.J., Arnold J. --

25 A. Yeah, R.J. --

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1 Q. -- Antonelli?

2 A. -- is -- would have -- yes. It would
3 have been typical that he might have been part of
4 something like that.

5 Q. Why do you say it would have been
6 typical for him to be part of something like
7 that?

8 A. As I was explaining, I think he may
9 have had a small piece of -- of it for helping
10 organ- -- organize everything and for
11 representing the company. That's --

12 Q. Okay. What did he represent the
13 company in?

14 A. What did he represent the company in?

15 Q. Yeah. You said he represented the
16 company. What was that?

17 A. I mean, it didn't-- like I said, this
18 was kind of a false start. It never really
19 happened. It never amounted to anything. It was
20 probably over before this was -- shortly after
21 this was filed.

22 Q. Wasn't it called Bicycle Burger?

23 A. I don't have anything to do with
24 Bicycle Burger.

25 Q. So that's different?

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1 A. Yeah. I don't know anything about it.

2 Q. You've never heard of it?

3 A. I've heard of it, but I didn't have
4 anything to do with that.

5 Q. Okay. So this is a -- this is from
6 Byrne Huddleston's deposition so I don't have
7 multiple copies, but it was Exhibit 5.

8 A. Uh-huh.

9 Q. This is the filing with the Secretary
10 of State's office by Mr. Antonelli. He lists you
11 as one of the five members.

12 A. Uh-huh.

13 Q. Were there any other documents
14 associated with Raleigh Foods, LLC?

15 A. Not that I recall.

16 Q. Okay. I -- I'm going to keep that one.
17 Thank you. Don't want to lose it.

18 MR. BEHR: Do you want to mark it as
19 Exhibit 2?

20 MR. OLIVER: We could, yeah. Okay. So
21 Brian has a copy. We'll mark it as Exhibit 2.

22 (KEITH EXHIBIT 2, Articles of
23 Organization, Raleigh Foods, LLC, was marked for
24 identification.)

25 BY MR. OLIVER:

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1 Q. And, again, this is the same thing we
2 just showed you, Mr. Keith.

3 A. Uh-huh.

4 Q. So there were -- I know you said you
5 thought it was spring of 2018 when you became
6 manager and Brandon stopped being a manager.

7 (KEITH EXHIBIT 3, E-mail Message from
8 Jonathan Keith to jonathan@baxleycorp.com,
9 February 15, 2019, Subject: Scan.pdf, with
10 Attachments, was marked for identification.)

11 BY MR. OLIVER:

12 Q. I'm going to show you Exhibit 3 and ask
13 you to review that, please.

14 A. Yes.

15 Q. You've seen that before?

16 A. Yes.

17 Q. This is an e-mail from you to --

18 A. Uh-huh.

19 Q. -- yourself to yourself, I guess. The
20 two e-mail addresses, are you
21 JKeithNC@iCloud.com?

22 A. Yeah. I guess the personal e-mail
23 address.

24 Q. Okay. And then Jonathan@Baxleycorp.com
25 is your e-mail address also?

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1 A. Right. So it was June rather than
2 spring.

3 Q. Okay. Looks like you took over the
4 manager by June 29th of 2018?

5 A. Uh-huh. Yes.

6 Q. Do you know why there are two corporate
7 resolutions signed and they're different?

8 A. I do not.

9 Q. Did you draft this?

10 A. I did not.

11 Q. Either one of them?

12 A. I did not.

13 Q. Do you know which one is the -- in the
14 corporate books for Baxley Corporation, LLC?

15 A. I do not.

16 Q. Where are the books for Baxley
17 Corporation, LLC?

18 A. I would assume with -- with Martha.

19 Q. Have you ever seen them?

20 A. Have I ever seen the books?

21 Q. Yeah. Any of the corporate documents
22 for the company.

23 A. I've seen -- I don't know if I've seen
24 the articles themselves for the initial formation
25 of it, but...

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1 Q. Do you believe that both of these
2 signatures on Exhibit 3 are Brandon's signatures?

3 A. I do.

4 Q. How are you compensated by Baxley
5 Corp., LLC?

6 A. How am I paid?

7 Q. Yeah.

8 A. Are you asking how much?

9 Q. How often, how much?

10 A. How often, weekly; 1300 a month before
11 bonus. 1300 a week. Excuse me.

12 Q. 1300 a week?

13 A. Yeah. 1325, I believe.

14 Q. Did your salary change when you became
15 a manager of the company?

16 A. I don't recall if it changed at that
17 point or not. I couldn't tell you when. I mean,
18 I had -- had a few raises since I started, but I
19 couldn't tell you when they happened.

20 Q. Who determines what your compensation
21 is now?

22 A. Right now it's -- it's been the same
23 thing for a good while.

24 Q. When you -- when you became the
25 manager, did you have any say in what your

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1 compensation would be after that point?

2 A. There was no -- it wasn't there to
3 increase it at that point as I recall.

4 Q. Who would make that decision?

5 A. It would be Martha and Rudy at this
6 point.

7 Q. You don't have any input in that as the
8 manager?

9 A. I mean, I would have some input in
10 it -- some input in it, but ultimately, it would
11 be their decision as owners.

12 Q. Have you had -- have you had any raises
13 since you became manager in June of 2018?

14 A. I do not -- I do not know when my last
15 raise was. I couldn't tell you that.

16 Q. Do you recall ever deciding to give
17 yourself a raise as the manager?

18 A. No, I do not.

19 Q. So that would have come from who?

20 A. Would have come from Martha and Rudy as
21 owners --

22 Q. Not --

23 A. -- not from --

24 Q. Not from Brandon?

25 A. No.

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1 Q. Did you continue to refer to yourself
2 as the estimator for Baxley Corp. after June 29th
3 of 2018?

4 A. That -- that was still one -- one of my
5 duties and I -- you know, I may have on -- I
6 still bid -- bid projects, the majority of them,
7 and I -- that may be -- I may have out of habit
8 put that on something at some point.

9 Q. Do you refer to yourself as the manager
10 of Baxley Corporation?

11 A. I do.

12 Q. You have held yourself out as the
13 manager to people outside of the Baxley
14 Corporation, LLC?

15 A. I have.

16 Q. What other employees are there of
17 Baxley Corporation, LLC?

18 A. There are probably 20 men at this
19 point. 20, 2- -- between 20 and 25 men.

20 Q. Are they all full-time?

21 A. Yes.

22 Q. Is it 20 or 25?

23 A. I'm not -- I'm not certain at this
24 point.

25 Q. Who --

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1 A. We have some -- some come and go.

2 Q. Okay. Who would know the answer to
3 that?

4 A. Martha would know the answer to that, I
5 would assume. Rudy would know the answer.

6 Q. Okay. Do you have the power to hire
7 and fire people?

8 A. I do.

9 Q. Have you hired and fired people?

10 A. I have.

11 Q. Is Sam Bradford an employee of the
12 company?

13 A. Yes.

14 Q. Okay. And he works in bridge or
15 traffic control?

16 A. Correct.

17 Q. What is Martha's role as manager of
18 Baxley Corp., LLC?

19 A. Martha handles any -- helps with any
20 key decisions.

21 Q. What does that mean?

22 A. What does that mean? I mean -- I don't
23 know how to answer that. I don't know what
24 you're asking.

25 Q. Can you give me one example of a key

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1 decision that Martha --

2 A. Sure.

3 Q. -- helps with?

4 A. Whether to -- we're -- we're --

5 currently we're dealing with -- there's a DOT
6 budget shortfall.

7 Q. Okay.

8 A. Martha and I have discussed what to do,
9 where to go to -- to be able to make up for that,
10 to find other work, getting us approved in other
11 markets, other states.

12 Q. What does --

13 A. Martha's on every -- she handles every
14 account. Every -- every bit of credit that we
15 have is -- is in Martha's account -- her name as
16 the guarantor.

17 Q. So you're saying she -- when she
18 handles every account, what you mean is the
19 accounts are in her name?

20 A. Correct.

21 Q. Bank account?

22 A. She initially funded, you know, the --
23 the company. It was her money that started this.

24 Q. How much was that?

25 A. I wasn't in this role at that time,

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1 but --

2 Q. How do you know she funded the company
3 initially?

4 A. Because I've had that discussion with
5 her.

6 Q. Okay. What other type of work has she
7 been able to find for Baxley Corporation under
8 the DOT budget shortfall?

9 A. What has she been able -- we've
10 discussed which -- which markets we're going to
11 go into and what's involved in doing that,
12 whether or not to go ahead and file as -- as a
13 WBE or not, a women-owned enterprise.

14 Q. Has the company done that?

15 A. We have not yet, no.

16 Q. What other markets has she led the
17 company into with the DOT budget shortfall?

18 A. Has she led. We are looking at
19 Virginia and Georgia and a greater percentage of
20 municipal jobs rather than just DOT.

21 Q. So has she found jobs in Virginia and
22 Georgia for the company?

23 A. I'm the estimator. I -- I still do the
24 estimation stuff and -- and find the -- find most
25 of the work. I run by projects that I'm

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1 interested in to her and discuss whether she --
2 what she thinks of them and what Rudy thinks of
3 them.

4 Q. Okay. Have they ever told you not --
5 no on any projects --

6 A. Yes.

7 Q. -- that you wanted to do?

8 A. Yes.

9 Q. Okay. Those are the -- any other key
10 decisions that she is involved with?

11 A. I'm sure there are. Off the top of my
12 head, I can't...

13 Q. The discussions that you just described
14 having with her do you also have with Brandon
15 Baxley?

16 A. Not -- not at this point.

17 Q. Have you since June of 2018?

18 A. I've asked for his advice on things,
19 but I don't get direction or directives from him.

20 Q. He doesn't give you any directives?

21 A. No. And any other position that I've
22 had if I had access to the person that handled it
23 before them -- before me I've looked for advice
24 as well.

25 Q. How much is Martha paid from the

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1 company?

2 A. I don't know.

3 Q. As a manager you don't feel like you
4 should know that information?

5 A. I don't know the answer whether --

6 Q. You've never asked?

7 A. No, never asked.

8 Q. What is Rudy Baxley's compensation?

9 A. Thousand a week.

10 Q. Okay. And what are his duties?

11 A. Rudy wears a lot of hats. He's -- this
12 past weekend he was -- he's in the field more
13 than anything else, helps run crew, helps
14 prob- -- problem solve on -- on the job.

15 Q. Uh-huh.

16 A. He's always been in construction his
17 whole life. He's a -- he's great in the field.

18 Q. Okay.

19 A. Deals with engineers when there are
20 issues, deals with safety inspections and...

21 Q. How many hours a week would you say you
22 work for Baxley Corp.?

23 A. Me? 60ish.

24 Q. Okay.

25 A. 60, 70.

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1 Q. How many would you say a week Rudy
2 works?

3 A. The same.

4 Q. And how many hours a week would you say
5 Martha works?

6 A. I would say -- I'm sure she's 40, you
7 know, somewhere in there.

8 Q. Okay. And how many a hours a week do
9 you think Brandon works for the company?

10 A. Probably more like me and Rudy. 60ish.

11 Q. And how much is Brandon paid by the
12 company?

13 A. Brandon's not paid at this time.

14 Q. Has he ever been paid by the company?

15 A. Not to my knowledge.

16 Q. Why isn't he paid for the work he does?

17 A. It hasn't been there.

18 Q. You mean there hasn't been money to pay
19 him?

20 A. There hasn't been -- we're rapidly
21 grow- -- you know, we're -- we're growing, but
22 we're -- he has not taken compensation other
23 than, I think, health insurance, maybe. I mean,
24 I'm not sure what his -- his compensation package
25 is.

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1 Q. Is he accruing money that's owed to him
2 for payroll?

3 A. I don't know.

4 Q. Do you know if the company owes him any
5 money?

6 A. I do not know.

7 Q. Who would know that?

8 A. Martha would know that.

9 Q. You're here to answer questions on
10 behalf of the company, aren't you?

11 A. I am.

12 Q. And you think Martha would be able to
13 answer that question on behalf of the company
14 better than you?

15 A. Martha's an owner and I'm not. There
16 is -- I manage the operations, but that doesn't
17 make me privy -- privy to every decision.

18 Q. Who are the owners of Baxley Corp.,
19 LLC?

20 A. Martha Baxley, Rudy Baxley.

21 Q. What percentages do they own?

22 A. I want to say Rudy has 25 percent,
23 Martha the rest.

24 Q. Brandon is not an owner?

25 A. He is not.

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1 Q. Has he ever been an owner?

2 A. He has not.

3 Q. You mentioned health insurance. Is any
4 other amount paid to or on behalf of Brandon
5 Baxley by the company?

6 A. No, not that I'm aware of.

7 Q. Does he receive any other sort of
8 benefit from the company?

9 A. No, not that I'm aware of.

10 Q. Does he receive any sort of -- are any
11 of his bills paid by the company?

12 A. I believe we -- we pay some -- we store
13 some equipment there at the home and use the home
14 as a corporate office and I think some of the
15 home -- household bills may be paid through the
16 company -- or are paid through the company,
17 but --

18 Q. Which ones?

19 A. -- potentially -- I -- I don't --

20 Q. You don't know whether or how much?

21 A. I don't know which, whether or how
22 much.

23 Q. So since June of 2018, you've not taken
24 any directives from Brandon; he's not told you
25 what to do with the company?

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1 A. No.

2 Q. You -- you've been telling him what to
3 do?

4 A. Yes.

5 Q. Okay. So he's not still making
6 decisions for Baxley Corp., LLC?

7 A. No, he's not.

8 Q. Okay. Doesn't -- doesn't Brandon tell
9 you which jobs to bid?

10 A. We've discussed jobs that are out there
11 and I've asked for his input and what he thinks
12 about them, but I'm not told what jobs to bid or
13 not to bid by him.

14 Q. Okay.

15 MR. OLIVER: We'll mark this as Exhibit
16 4.

17 (KEITH EXHIBIT 4, E-mail Strings, Top
18 String Dated November 7, 2018, Subject:
19 Emergency Contracting Opportunity for Hurricane
20 Florence, with Attachments, was marked for
21 identification.)

22 BY MR. OLIVER:

23 Q. There are a number of e-mails here.
24 I'll just ask you about the first one and then
25 we'll go through. This is an e-mail from Brandon

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1 to you in November of last year. Isn't he
2 directing you to bid the elastometric concrete
3 portion of this project and bid high?

4 A. Yes.

5 Q. Is that what that e-mail says on the
6 first page of --

7 A. Yes.

8 Q. -- Exhibit 4?

9 A. Yes.

10 Q. On the next page there's an e-mail from
11 him to you December 20th of 2018, Jonathan, see
12 bid attached. Please e-mail immediately
13 confirmation that you received this opportunity
14 and the date you expect the bid to be submitted.

15 That's from Brandon, isn't it?

16 A. Uh-huh.

17 Q. Is he directing you to place a bid?

18 A. This doesn't take into -- into account
19 the context of, you know, phone calls before and
20 after this e-mail, though. It does -- it does
21 appear that way, but --

22 Q. Okay. And you write --

23 A. -- typically --

24 Q. -- back, receipt confirmed.

25 A. Yeah.

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1 Q. I'll read over it this morning and let
2 you know when I have the bid ready when I see you
3 today.

4 A. Uh-huh.

5 Q. Next one, e-mail from him January 4th
6 of 2019, to you, I want this one. Please confirm
7 you received.

8 A. Yeah.

9 Q. And you say, got it, look over this
10 a.m., right?

11 A. Uh-huh.

12 Q. Next one is e-mail from Brandon to you
13 January 22nd, 2019, we will bid this project. It
14 is bonded and there is a prebid. Add this to
15 your list and confirm you have received this bid
16 invite, correct?

17 A. Right.

18 Q. Is that him directing you to bid
19 another project?

20 A. As I -- like I said, this doesn't
21 account for phone calls that we've made before
22 for discussions that we had in the field about
23 what jobs were --

24 Q. Well, am I reading it wrong? Is he
25 not --

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1 A. It doesn't --

2 Q. -- directing you --

3 A. It does come --

4 THE REPORTER: One --

5 MR. OLIVER: Yeah. I'm sorry.

6 THE REPORTER: One at a time.

7 BY MR. OLIVER:

8 Q. Am I reading it wrong? Is he not
9 directing you to bid a project?

10 A. It comes off as that, but that's not
11 the case.

12 Q. The next one, just an e-mail to you
13 that says, sign and return, please check first,
14 and this is a -- attached to it is a change
15 order --

16 A. Uh-huh.

17 Q. -- which I'm assuming you signed on
18 behalf of Baxley Corporation?

19 A. Uh-huh.

20 Q. Is that a yes?

21 A. Yes.

22 Q. We have another one January 28th of '19
23 telling you to sign and return, please check
24 first; is that right?

25 A. Yes.

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1 Q. Next one, bid this. Confirm it's on
2 your list from February of this year.

3 A. Yes.

4 Q. Next one from February this year, it's
5 back again. We get it this time. Is he also
6 directing you to do a new -- new bid? Am I
7 reading that right?

8 A. You're reading it correctly.

9 Q. The next one's in all caps to you, add
10 this to your list. Is that another bid he's
11 directing you to do?

12 A. He's -- Brandon bringing a bid to my
13 attention is not necessarily giving me a
14 directive to bid it.

15 Q. Is this different from how it -- he
16 directed you before June of 2018 or is it the
17 same?

18 A. I don't know that I could answer that.
19 I mean, I don't -- I believe it is different,
20 yes.

21 Q. In what way?

22 A. I bid jobs -- bid the ones that I
23 prefer to bid. There have been many that I've
24 taken off -- that I have the authority to take
25 off on my own. I'm not -- I don't have to answer

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1 to Brandon at this stage.

2 Q. But do you answer to Brandon when he
3 tells you to bid a project?

4 A. I may reply to Brandon, but I'll tell
5 him why I don't want to bid it and why we
6 shouldn't and why I'm not.

7 Q. You've never done that by e-mail,
8 though, have you?

9 A. I -- I don't know. I don't recall.

10 Q. Okay. What is the business of Baxley
11 Corporation? What does it do?

12 A. We are largely a construction company.

13 Q. Okay. What sort of construction?

14 A. Mostly highway/bridge maintenance and
15 repairs. We don't put in roads or put in bridges
16 but maintenance and repair on -- on those types
17 of projects.

18 Q. Anything else?

19 A. Clearing.

20 Q. Anything else?

21 A. Tree work. Municipal tree work.

22 Q. Is that tree removal?

23 A. Yes.

24 Q. Tree trimming?

25 A. Uh-huh.

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1 Q. Okay. Anything else?

2 A. I think that is about it.

3 Q. I saw a bunch of different projects
4 that you worked on. I'm going to give you some
5 descriptions and I don't know what all of them
6 mean, but I'll ask you if this is the business of
7 Baxley Corp. Cut and shove?

8 A. Uh-huh.

9 Q. What is cut and shove?

10 A. Cut and shove is storm cleanup, on-call
11 storm cleanup for clearing the roads after a
12 weather event.

13 Q. Do you install culverts?

14 A. Yes.

15 Q. Bridge preservation?

16 A. Yes.

17 Q. Installation of fencing?

18 A. Yes.

19 Q. Moving fencing?

20 A. Yes.

21 Q. Installation of flagpoles?

22 A. Yes. We did a --

23 Q. Road closures?

24 A. Yes.

25 Q. Traffic control?

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1 A. Yes.

2 Q. Landscaping?

3 A. Yes.

4 Q. Shoreline stabilization?

5 A. Yes.

6 Q. Installation of irrigation systems?

7 A. We had one landscaping project that
8 we -- that we performed last year. Several of
9 those items showed up on that one, but, yes.

10 Q. Repair and replace median curbs?

11 A. Yes.

12 Q. Drainage improvements?

13 A. Yes.

14 Q. Road reconstruction?

15 A. Yes.

16 Q. Remove and replace drainage pipes?

17 A. Yes.

18 Q. Excavation?

19 A. Yes.

20 Q. Installation of mulch?

21 A. Yes.

22 Q. Wetlands restoration?

23 A. Yes.

24 Q. Polypropylene barrier wall

25 construction?

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1 A. Yes. We bid it. We've not performed
2 any.

3 Q. Oh, you bid it but not -- not gotten
4 the bid?

5 A. Right.

6 Q. Were you qualified to give the bid?

7 A. Yes.

8 (KETH EXHIBIT 5, Letter to Mr. Perez
9 from Brandon Baxley, January 18, 2018, with
10 Attachment, was marked for identification.)

11 BY MR. OLIVER:

12 Q. Exhibit 5 is something that Brandon
13 sent out to a Mrs. Perez [sic] as a -- as
14 qualifications of Baxley Corporation back in
15 January of last year.

16 A. Uh-huh.

17 Q. Do you agree with the statements he's
18 made on the letter there to Mrs. -- Mr. Perez?
19 I'm sorry.

20 A. Yes.

21 Q. Does Baxley Corporation, LLC, have
22 certified arborists on staff?

23 A. Yes.

24 Q. What are the names of the certified
25 arborists?

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1 A. I'm not sure which -- I'm not sure
2 which of the employees that hold the
3 certification. Antonio Aristeo. Two of our key
4 men, I know they've been through the -- but I'm
5 not -- I'm not certain who holds the
6 certification.

7 Q. Does Brandon Baxley have one?

8 A. I believe so.

9 Q. Okay. The next two pages there's some
10 qualifications and references and further
11 description of Baxley Corp., LLC. On the bottom
12 of the second page it says, Baxley is the tree
13 maintenance and removal contractor for the NCDOT,
14 and then it lists a number of counties.

15 A. Uh-huh.

16 Q. Is it still the contractor for those
17 counties for those projects?

18 A. I don't believe so, no.

19 Q. Is it a contractor -- NCDOT contractor
20 for any of those counties?

21 A. We still hold some cut and shove
22 contracts that -- for some of these counties. I,
23 off the top of my head, can't tell you which
24 ones.

25 Q. Was it true in January of '18, that

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1 statement?

2 A. I believe so.

3 Q. So when did Baxley lose those
4 contracts?

5 A. The contracts come up -- can come up
6 yearly. Some of them have renewals, some don't.
7 I believe everything expires -- expires or has
8 the -- or has expired this year -- expired this
9 year.

10 Q. So is that not an area of -- of
11 business that Baxley Corp. is interested in
12 pursuing?

13 A. It's not -- these contracts can be
14 misleading. They -- some of -- one of these is
15 for -- I think there's one in Division 4 that I
16 believe the contract price is 1.6 mil. Well,
17 they've spent 15,000 in two years, you know, so
18 it's -- you know, some of them are...

19 Q. So is that an area --

20 A. And they're --

21 Q. -- of business that Baxley Corp. is
22 interested in pursuing?

23 A. We're not. We're getting away from
24 that.

25 Q. Okay. And more into the --

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1 A. More into --

2 Q. -- other types of things we discussed?

3 A. Yes.

4 Q. Okay. When did Baxley Corp. make that
5 shift away from tree work and more into the other
6 types of construction services we discussed?

7 A. As I've come on, you know, we -- my
8 background was in construction.

9 Q. Uh-huh.

10 A. Did not have -- I had very little
11 experience in the tree stuff that was -- Baxley
12 was focused on when I got here, and as we --
13 we've chased more and more real construction
14 jobs.

15 Q. Why did Brandon resign as manager of
16 Baxley Corp.?

17 A. Because of all -- of the time that all
18 of this was taking.

19 Q. The bankruptcy?

20 A. Yes. Yes.

21 Q. Okay. So he's still working 60 hours a
22 week, right?

23 A. But it's not a -- I don't -- I think --
24 I'm not -- I -- I couldn't speak to exactly how
25 many hours Brandon is working when he's, you

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1 know -- I mean, he's at -- he works from home as
2 well, you know, just as I do. I couldn't tell
3 you. I know I gave that answer a little while
4 ago, but I'm not certain how many hours he's
5 working. But just the stress level was quite a
6 bit higher.

7 Q. Do you know when he filed bankruptcy?

8 A. The previous summer from stepping down
9 as I recall, right?

10 Q. Do you think he filed in summer of
11 2017?

12 A. I believe so. I -- I don't recall.

13 Q. So the reason why he stepped down as
14 manager was because of the stress of the
15 bankruptcy?

16 A. That's part of it.

17 Q. What was the other part of it?

18 A. That's --

19 Q. I'm sorry?

20 A. I -- I don't -- you would have to
21 ask -- I -- that's all I've got. That's all I
22 know.

23 Q. You're not aware of any other reason?

24 A. No.

25 Q. Would it surprise you to know that he

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1 filed bankruptcy July 8th of 2018?

2 A. I -- no.

3 Q. That was, what, eight or nine days
4 after he resigned as manager?

5 A. Yeah. No.

6 Q. It wouldn't surprise you?

7 A. No, I -- it wouldn't.

8 Q. You were thinking it was the year
9 prior. That's why I'm asking.

10 A. Yeah. I'm -- dates are not my strong
11 point and I have -- with -- I've told you just
12 about every one to the best -- you know, as I
13 recall. I don't -- I'm not certain. If I'm
14 certain, I'll tell you I am.

15 Q. That's fine. Did -- did he resign
16 manager because he was going to file bankruptcy?

17 A. No, not that I'm -- not that I'm aware
18 of.

19 Q. What is a prime NCDOT contractor?

20 A. There are different levels of approval.
21 You have to have a certain -- be an approved
22 contractor to work on DOT jobs. There are
23 different levels of jobs that you can then bid.
24 Prime is in the middle, I guess. It's a
25 mid-level --

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1 Q. Okay.

2 A. -- DOT approval.

3 Q. What is higher than prime?

4 A. Bidder.

5 Q. Bidder?

6 A. Uh-huh.

7 Q. What's higher than bidder?

8 A. I don't think there's anything higher

9 than bidder.

10 Q. What's lower than prime?

11 A. Sub. Subcontractor.

12 Q. Anything lower than sub?

13 A. Not that I'm aware of.

14 Q. Okay. Is Baxley a prime NCDOT

15 contractor?

16 A. We are.

17 Q. Okay. And you were back in February of

18 '18 --

19 A. Yes.

20 Q. -- or January of '18?

21 A. Yes.

22 Q. Does Brandon Baxley hold a pesticide

23 license with multiple endorsements?

24 A. I believe he does, yes.

25 Q. And is he an ISA certified arborist?

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1 A. I believe so.

2 Q. Does Baxley --

3 A. I need to take a break and get some --

4 Q. Oh, yeah, please.

5 A. We can finish this question, but after
6 this --

7 Q. No. No. Go ahead.

8 A. -- I'm going to --

9 Q. We -- we can --

10 A. -- take a break and --

11 Q. -- take a break now.

12 A. -- get some water.

13 Q. Yeah. Sure.

14 A. Yeah.

15 (Whereupon, there was a recess in the
16 proceedings from 9:46 a.m. to 9:54 a.m.)

17 BY MR. OLIVER:

18 Q. All right. Back on the record after a
19 little break.

20 A. Yes.

21 Q. Do you hold a general contractor's
22 license?

23 A. Not currently.

24 Q. Did you have --

25 A. It's expired.

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1 Q. Did you have one in January of last
2 year?

3 A. January of last year, I did not.

4 Q. When did your contractor's license
5 expire?

6 A. Probably 2011, 2012. My contractor's
7 license is expired for a good while.

8 Q. Do you know whether Baxley Corp. is
9 still giving the same qualifications information
10 to bids that it makes as it did on this Exhibit
11 5? I'll just point out on the last page that it
12 says you hold a general contractor's license.

13 A. It's not accurate. It does -- it does
14 say that.

15 Q. Do you know if the information that you
16 give out on bids for the company still says that?

17 A. I don't -- I do not send out -- I have
18 not sent out anything that says that that I'm
19 aware of.

20 Q. Does Brandon still send out letters
21 like this one that he sent last year?

22 A. Does he still? No.

23 Q. And he hasn't since June of 2018?

24 A. Not that I'm aware of, no.

25 Q. Does Baxley Corporation hold a general

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1 contractor's license?

2 A. Yes.

3 Q. Who is the qualifier for it?

4 A. Brandon is the qualifier.

5 Q. How long has he had his general --

6 A. Highway license. I --

7 Q. How long has he had his general

8 contractor's license?

9 A. I do not know.

10 Q. So prior to June 29th of 2018, Brandon
11 Baxley did represent himself to be a member and a
12 manager of Baxley Corp., LLC?

13 A. He did.

14 (KEITH EXHIBIT 6, Non-Collusion
15 Affidavit, 7/18/18, was marked for
16 identification.)

17 BY MR. OLIVER:

18 Q. Exhibit 6. It's difficult to read this
19 copy, but I think we can make it out. This is
20 some sort of non-collusion affidavit for a bid.
21 Are you familiar with a form like this?

22 A. Yes.

23 Q. Do you see that Brandon has signed on
24 behalf of Baxley Corporation?

25 A. Uh-huh.

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1 Q. I'm sorry. Yes?

2 A. Yes.

3 Q. Okay. This was back in, looks like --

4 A. Yeah. I've signed, you know, hundreds
5 of these.

6 Q. You have?

7 A. And I think out of habit, Brandon has
8 signed -- you know, it doesn't state that he's a
9 manager or owner or anything here that I can see
10 as -- as well. I mean, it's -- may have been one
11 that was delivered -- hand delivered and so he
12 signed it here in Raleigh. It doesn't indicate
13 that he's -- I don't see where it indicates
14 anything about his role.

15 Q. You don't see where it indicates if he
16 was a member -- member or manager?

17 A. Do you?

18 Q. I recognize this copy doesn't word --
19 but if he did sign as member or manager, would
20 that surprise you?

21 A. You know, he did frequently, you know,
22 be- -- before stepping down from this role. If
23 he signed one some place in error out of habit,
24 that's possible. That could have happened.

25 Q. Okay. You mean if he signed one since

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1 June 29th --

2 A. Since stepping down --

3 Q. -- of 2018?

4 A. -- correct.

5 Q. I'm sorry. We need to make sure we're
6 careful. You mean if he signed one that was
7 after June 29th of 2018, that would have been an
8 error? Is that what you're saying?

9 A. Yes.

10 (KEITH EXHIBIT 7, Execution of Bid,
11 with Attachment, was marked for identification.)

12 BY MR. OLIVER:

13 Q. This is Exhibit 7. Do you see on the
14 first page of Exhibit 7 that Brandon has signed
15 as member/manager and he circled member/manager
16 on the first page?

17 A. I do.

18 Q. And that's on behalf of Baxley
19 Corporation, LLC?

20 A. Yes.

21 Q. And then on the last page of this
22 exhibit, the third page, he's also signed again
23 as manager. And this was in January of 2018.
24 That would not surprise you, would it?

25 A. No.

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1 Q. Do you know if he's ever represented
2 himself to be a director of Baxley Corporation?

3 A. I do not.

4 Q. Who are the directors of Baxley
5 Corporation?

6 A. I'm not certain. I would assume -- I'm
7 not certain.

8 Q. Are there directors for Baxley
9 Corporation?

10 A. There are officers, I'm sure.

11 Q. Who are the officers?

12 A. Martha and Rudy.

13 Q. What are their positions?

14 A. I'm not sure how they're listed on the
15 corporate docs. I wasn't here when it was
16 formed.

17 Q. Have you ever seen them sign their
18 names with any sort of title beside them?

19 A. Member/manager.

20 Q. Anything other than member/manager?

21 A. No, I have not.

22 (KEITH EXHIBIT 8, Payroll Form for Week
23 Ending 3/31/18, was marked for identification.)

24 BY MR. OLIVER:

25 Q. Show you what's marked as Exhibit 8.

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1 This is something else signed by Brandon on
2 behalf of Baxley Corp. and this is to the
3 Department of Labor, U.S. Department of Labor.
4 Do you see on the second page where he has
5 signed, Brandon Baxley, director?

6 A. I do.

7 Q. So the dates that I see on here -- this
8 is a payroll certification for the week ending
9 3/31/18; is that right?

10 A. It is.

11 Q. I saw -- we saw in the documents that
12 he resigned as member/manager. Did you see
13 anything where he resigned as director?

14 A. I did not.

15 Q. Have you ever received information that
16 he resigned as director of Baxley Corp.?

17 A. I have not.

18 MR. JANVIER: I'm going to object to
19 form. I don't represent this witness, but since
20 I --

21 MR. OLIVER: Okay.

22 MR. JANVIER: -- represent the debtor,
23 I'm going to object to form.

24 MR. OLIVER: Okay.

25 BY MR. OLIVER:

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1 Q. When somebody objects to form, it
2 usually means there's something wrong with the
3 way I worded the question. Maybe it's not clear.
4 Did you not understand what I meant?

5 A. Ask the question again, please.

6 Q. Have you ever received any information,
7 I'll add, from anyone or any source that Brandon
8 had resigned as a director of Baxley Corp., LLC?

9 MR. JANVIER: Same objection.

10 MR. OLIVER: Yeah. Okay.

11 BY MR. OLIVER:

12 Q. He's objecting for the record, but you
13 can still answer it, and if you don't understand
14 it, I'll try to reword it.

15 A. No, I have not.

16 Q. When did Brandon first become the
17 managing director of Baxley Corp.?

18 A. I do not know.

19 Q. He was the managing director of Baxley
20 Corp. at some point, wasn't he?

21 A. I do not know.

22 Q. Did you ever receive e-mails from
23 Brandon where he signed them as managing director
24 of Baxley Corp.?

25 A. Not that I'm aware of. Not that I

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1 recall.

2 (KEITH EXHIBIT 9, E-mail String,
3 November 1, 2016, Subject: Shane Edge & Password
4 Changes, was marked for identification.)

5 BY MR. OLIVER:

6 Q. Show you this Exhibit 9 and see if that
7 refreshes your recollection. This is just an
8 example of one such e-mail. Do you see that you
9 received an e-mail from Brandon on November 1st,
10 2016, on the first page of Exhibit 9? Do you see
11 that?

12 A. Yes.

13 Q. And how did he sign his name? What's
14 his signature block say?

15 A. It says, managing director.

16 Q. And on the second page there's another
17 e-mail from the same date and what does the
18 signature block say?

19 A. Same, managing director.

20 Q. Do you know when he changed that
21 designation?

22 A. I do not.

23 Q. You started about three years ago with
24 the company. Was that 2016?

25 A. It would have been, yes.

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1 Q. Was it -- what time of year was it?

2 A. I -- I'm not certain when I -- what --
3 I'm not certain which month.

4 Q. Do you remember if it was the summer or
5 the winter or the spring or the fall?

6 A. Late spring, summer.

7 Q. So November 1st of '16 would have been
8 relatively early in your time at Baxley Corp.?

9 A. Yes.

10 Q. Do you ever remember a time prior to
11 November 1st of '16 where Brandon did not sign
12 his e-mails as managing director of Baxley Corp.?

13 A. I don't remember what he signed his
14 e-mails at -- as in -- in 2016 at all.

15 Q. Did he continue to sign on behalf of
16 Baxley Corp. after he stepped down as manager in
17 June of 2018?

18 A. Not that I recall.

19 Q. Did he continue to man- -- represent
20 himself as managing director after he stepped
21 down as manager in June of 2018?

22 A. I don't recall.

23 Q. Do you remember being copied on e-mails
24 after June of 2018 in which Brandon was
25 representing himself to be the managing director

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1 of Baxley Corp.?

2 A. I do not.

3 (KEITH EXHIBIT 10, E-mail String,
4 September 11, 2018, Subject: Cut and shove
5 durham, was marked for identification.)

6 BY MR. OLIVER:

7 Q. I'll show you Exhibit 10 and see if
8 that refreshes your recollection. This is an
9 e-mail to several people including yourself from
10 September 11th, 2018. I'll say this is one of
11 many examples. Does that refresh your memory as
12 to Brandon signing e-mails as managing director
13 of Baxley Corp. after June of 2018?

14 A. Could you rephrase that?

15 Q. Does this refresh your memory as to
16 Brandon signing e-mails as managing director of
17 Baxley Corp. after June of 2018?

18 A. I can see that he has. It doesn't
19 refresh my memory, not particularly, not a -- not
20 a detail that would stand out --

21 Q. You don't remember telling --

22 A. -- six years later.

23 Q. You never told Brandon, hey, stop
24 calling yourself managing director, I'm the
25 manager now, you're not?

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1 A. Not that I recall, no.

2 (KEITH EXHIBIT 11, E-mail Message from
3 Brandon Baxley to Jonathan Keith, et al.,
4 November 1, 2018, Subject: BASF - PO & Order,
5 was marked for identification.)

6 BY MR. OLIVER:

7 Q. Show you what I'm marking as Exhibit
8 11. This one takes us to November 1st of 2018.
9 Do you see that Mr. Brandon Baxley continued to
10 hold himself out as managing director of Baxley
11 Corp. at least as of November 1st, 2018?

12 A. I see this, yes. Likely, he never
13 changed his --

14 Q. Position?

15 A. No, the -- the footer on his e-mail.

16 Q. Okay.

17 A. Just neglected to change that. It's
18 not something he would have entered in each time.

19 Q. And this is an example of him telling
20 you something to do for the business, right?
21 Let's get this order in Monday at the latest. As
22 of yesterday, we've doubled up crews to increase
23 production. I want to finish the year on a
24 strong note. I would like product here in ten
25 days.

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1 A. I don't see that as a directive.

2 Q. Okay. What do you see it as?

3 A. We were discussing a job and this is
4 a -- a snapshot that you're looking at that
5 doesn't -- it doesn't include conversations that
6 we had about it. It's out of context. It
7 doesn't -- it doesn't show me much.

8 Q. Is this the typical e-mail you might
9 have received from --

10 A. We're both --

11 Q. -- Brandon --

12 A. -- fairly direct with each -- I'm
13 sorry.

14 Q. Is this a typical e-mail you might have
15 received from Brandon after June of 2018?

16 A. Is this a typical e-mail? It's an
17 e-mail I received from Brandon. As to whether
18 it's typical or not, I do not know.

19 Q. It doesn't strike you as unusual in any
20 way?

21 A. Does not.

22 (KEITH EXHIBIT 12, E-mail String,
23 September 24, 2018, Subject: Invoice 59798 from
24 Baxley Corporation, with Attachment, was marked
25 for identification.)

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1 BY MR. OLIVER:

2 Q. Exhibit 12 is another series of e-mails
3 from Brandon you're copied on where he's holding
4 himself out to be managing director back in
5 September of '18; is that right?

6 A. Yes.

7 Q. And he is sending an invoice on behalf
8 of Baxley Corporation to the North Carolina
9 Department of Transportation; is that right?

10 A. He is.

11 Q. And that invoice on the second page is
12 just over \$189,000?

13 A. Yes.

14 Q. That cut and shove work, would that
15 have been related to Hurricane Florence likely?

16 A. Yes.

17 (KEITH EXHIBIT 13, North Carolina
18 Licensing Board License Details, Baxley
19 Corporation, was marked for identification.)

20 BY MR. OLIVER:

21 Q. This is a -- it's Exhibit 13. It's
22 something printed from North Carolina Licensing
23 Board for General Contractors and it gives
24 information about -- at least as of May of this
25 year about the contractor's license for Baxley

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1 Corp., LLC, and it shows that Brandon Baxley is
2 the qualifier and it's a highway license,
3 limited, correct?

4 A. Yes.

5 Q. And I think you testified he is still
6 the qualifier?

7 A. Yes.

8 Q. This was renewed in March -- March 26th
9 of 2019. Do you know if he was the qualifier for
10 the company prior to that date?

11 A. Prior to the renewal? Yes.

12 Q. Okay. And you don't know how long he
13 was the qualifier for the company?

14 A. I don't recall when he got his license.

15 Q. Did he have his license when you
16 started working for the company sometime in 2016?

17 A. I do not know if -- I don't know.

18 (KEITH EXHIBIT 14, Letter from Jonathan
19 Keith, May 28, 2019, was marked for
20 identification.)

21 BY MR. OLIVER:

22 Q. Next Exhibit 14 is a letter from you as
23 manager of Baxley Corporation. If you'd take a
24 look at that, please. It's dated May 28th of
25 2019.

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1 A. Yes.

2 Q. Why did you write this letter?

3 A. Why?

4 Q. Yes. Who asked you to write it?

5 A. It was pertaining to his bankruptcy
6 case.

7 Q. Was it due to a request for information
8 maybe sent by my office?

9 A. I believe so.

10 Q. Okay. Is the information -- was the
11 information true in this letter as of May 28th,
12 2019?

13 A. It was.

14 Q. This says, Martha Baxley has received
15 no compensation or distributions, and you had
16 testified earlier that she's receiving a thousand
17 dollars a week.

18 A. I don't recall testify- -- Rudy
19 Baxley --

20 Q. Oh, I'm sorry. Rudy --

21 A. -- a thousand a week.

22 Q. -- Baxley.

23 A. Yes.

24 Q. So Martha receives no compensation?

25 A. Right.

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1 Q. And Brandon receives no compensation?

2 A. Yes.

3 Q. And has never received compensation
4 from the company?

5 A. Not that I -- not that I'm aware of
6 while I've held this role.

7 Q. Both of them? Neither has received
8 any --

9 A. Yes.

10 Q. -- compensation or distributions since
11 June of 2018?

12 A. Not that I'm aware of, no.

13 Q. And then you have Rudy's compensation
14 in the amount of 88,801.52 --

15 A. Uh-huh.

16 Q. -- in a roughly five-month period --
17 I'm sorry, three- -- two-and-a-half-year period?

18 A. Uh-huh.

19 Q. Okay. This excludes 24,000 in loan
20 repayments made to Rudy during 2019. What were
21 those loans for?

22 A. I don't know. I don't recall.

23 Q. So when you wrote this letter, where
24 did you get information that he had been paid
25 24,000 in loan repayments during 2019?

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1 A. From Rudy and Martha, I recall.

2 Q. Did you review any company records
3 before you wrote this letter?

4 A. I did.

5 Q. Which records?

6 A. The company books, QuickBooks.

7 Q. Okay. Did you find on there loan
8 repayments to Rudy?

9 A. I don't recall. I mean, this has been
10 months and months ago. I don't recall.

11 Q. You don't recall whether you saw on the
12 company books that Rudy had made loans or that he
13 had been paid back loans?

14 A. I know Rudy has made loans. I'm not
15 sure what he's been paid back.

16 Q. So is it fair to say the information
17 you put in this letter was information that you
18 received from Rudy as far as what he had been
19 paid in 2019?

20 A. Combination of Rudy and -- and the
21 QuickBooks and -- and Martha.

22 Q. So you have access to the company
23 QuickBooks?

24 A. I do.

25 Q. Is it on your computer?

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1 A. It's web-based.

2 Q. Okay. So you have a password that
3 allows you to --

4 A. Yes.

5 Q. -- anywhere you have an internet
6 connection to access it?

7 A. Yes.

8 Q. Do you input any information into the
9 company QuickBooks?

10 A. I do.

11 Q. What sort of information?

12 A. Invoicing, invoice jobs, quote -- some
13 quotes for jobs.

14 Q. Have you had access to the company
15 QuickBooks since you became a manager in June of
16 2018?

17 A. Yes.

18 Q. How about prior to that?

19 A. Yes.

20 Q. All the way back to when you started in
21 2016?

22 A. I don't know at what point I started
23 invoicing some of my -- some of my projects but
24 sometime between those two dates.

25 Q. Do you know whether the company had

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1 QuickBooks all the way back when you started in
2 2016?

3 A. I believe so. I do not know.

4 Q. Other than health insurance and perhaps
5 some payment for the use of his residence as an
6 office, you testified that Brandon Baxley has
7 received no monetary benefit from the company; is
8 that right?

9 A. Yes.

10 Q. Okay. Doesn't he have the use of a
11 Baxley credit card -- Baxley Corp. credit card?

12 A. Yes. There -- our foremen have them, I
13 have one, and there are quite a few of those.

14 Q. And do you review the charges on that
15 credit card?

16 A. I do not.

17 Q. Who does?

18 A. I would assume Ginger and Rudy do.

19 Q. You don't know if they do?

20 A. I -- I don't know if they do.

21 Q. Who gave Brandon authorization to use
22 the credit card?

23 A. I do not know.

24 Q. Did he have the credit card before he
25 resigned as manager?

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1 A. Yes.

2 Q. And he's had it since then, too, right?

3 A. I would assume so.

4 Q. What type of expenses is he authorized
5 to use on the card?

6 A. I mean, we use them for all -- all --
7 all kinds of things. Materials. These are the
8 kinds of work we do. Our people are on the job.
9 You know, you can't typically leave for lunch.
10 There are food -- there's food, meals, groceries,
11 hotel rooms. Typical items. I mean, I -- you
12 know, there may be other things I'm leaving out,
13 but --

14 Q. So business-type expenses?

15 A. Business expenses.

16 Q. You don't ever use your credit card for
17 personal expenses, do you?

18 A. I do not.

19 Q. Does Brandon use his for personal
20 expenses?

21 A. I don't believe so.

22 Q. Have you authorized him to?

23 A. I have not.

24 Q. Does Baxley Corp. pay for Brandon's
25 cell phone?

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1 A. Baxley Corp. pays for all of the cell
2 phones, probably 20 of them.

3 Q. Including Brandon's?

4 A. Including Brandon's.

5 Q. Do you know whether Brandon has a
6 personal cell phone in addition to the cell phone
7 he uses for business?

8 A. I do not.

9 Q. Do you only know one number that you
10 call him on?

11 A. Yes.

12 Q. Does Brandon have the use of a vehicle
13 owned by Baxley Corp.?

14 A. Yes.

15 Q. What kind of car?

16 A. It's a work truck, GMC. I'm not sure
17 if he's -- which truck he's in.

18 Q. Okay.

19 A. We move them around quite a bit.

20 Q. Is that his primary vehicle?

21 A. Ginger has an Audi that they use for,
22 you know, weekends and trips and whatever.
23 It's -- you wouldn't drive these trucks as your
24 personal vehicle if you don't have to.

25 Q. Other than the Audi --

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1 A. They're big and heavy and...

2 Q. Other than the Audi that Ginger has,
3 are -- have you ever seen him drive any other
4 vehicles?

5 A. There was a BMW, and I'm not sure who's
6 driving it now. It's an old -- old BMW X5 that's
7 floating around, someone's using as a company car
8 at this point.

9 Q. Okay. You don't see Brandon drive
10 anything other than the company car and the Audi?

11 A. I see him in the Audi and -- and the
12 company vehicle -- or the company truck that
13 he's -- whichever one he's in.

14 Q. Does the company pay Brandon's vehicle
15 insurance?

16 A. Pays for the company's policy --

17 Q. Does --

18 A. -- which he would be covered under as
19 an employee.

20 Q. Does it pay for his meals?

21 A. If they're in -- you know, if they're
22 in regards to business. If we're out on the
23 jobs, any one of us may pick up -- pick up meals.

24 Q. Okay. Is there any kind of limit on
25 what he can charge for meals in a given day?

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1 A. I don't have one on me. I don't know
2 what his -- I don't -- don't believe so, no.

3 Q. Or any limit on what he can spend on
4 meals in a week or a month?

5 A. No.

6 Q. Do you know how much Brandy -- excuse
7 me, Brandon spends on his Baxley Corp. credit
8 card in a -- in an average month?

9 A. I do not.

10 Q. Or an average week?

11 A. I do not.

12 Q. Or even yearly?

13 A. I do not.

14 Q. How is the company doing financially?

15 A. Ask that again, please.

16 Q. How is the company doing financially?

17 A. I mean, could you be more specific?

18 What are you -- what exactly -- in -- in regards
19 to what?

20 Q. You had said earlier there wasn't money
21 to pay Brandon --

22 A. Yes.

23 Q. -- which leads me to think maybe the
24 company's not profitable, but I'd like to hear
25 your view on it.

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1 A. We've had four million in work dissolve
2 off the books through the DOT's budget crisis
3 this year and there are -- things have -- have
4 been tight at times. We have -- the DOT
5 typically pays very quickly. We've gotten
6 invoices that are 90 days old at this point, so
7 there have been times when there's a cash flow
8 crunch for sure.

9 Q. Okay. So would you say the business is
10 profitable or not profitable for 2019?

11 A. I -- if so, not by much.

12 Q. Okay. Do you -- as a manager do you
13 get regular reports on the profitability of the
14 company?

15 A. Yes.

16 Q. How often?

17 A. Yearly.

18 Q. Okay. So those are annual statements?

19 A. Uh-huh.

20 Q. You don't get any reports any sooner
21 than that or more regular than annually?

22 A. Not a -- a formal report, no.

23 Q. How do you describe a formal report?
24 What sort of report is that?

25 A. I mean, I try to always have an idea of

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1 what we have coming -- you know, what expenses
2 are coming up and when -- and what our accounts
3 receivable is.

4 Q. Okay.

5 A. But as far as whether we're profitable
6 at a -- at a snapshot of that, I don't have that.

7 Q. Well, with the formal reports, are they
8 profit and loss statements?

9 A. Yes.

10 Q. Are they balance sheets?

11 A. Yes.

12 Q. Okay. Do you have like a
13 year-over-year comparison?

14 A. Yes.

15 Q. As far as the less formal reports that
16 you get more often than annually, what do those
17 look like?

18 A. What do they look like? What --

19 Q. Yeah. You said you -- you get formal
20 reports once a year. I'm -- I'm asking about the
21 more --

22 A. I got --

23 Q. -- informal reports.

24 A. There's not a -- I think I just
25 answered that.

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1 Q. I don't understand what you said. Then
2 I'll ask you again.

3 A. Yeah. I don't -- let's do that --

4 Q. Do you receive --

5 A. -- please.

6 Q. -- any sort of reporting more regularly
7 than annually and, if so, what does that look
8 like?

9 A. Then, no. Then the answer's no. As
10 far as a -- a report, I -- no.

11 Q. So how do you keep abreast of what
12 expenses are coming up? You testified that you
13 always know what expenses are always coming up,
14 so how --

15 A. I --

16 Q. -- do you get that information?

17 A. I didn't testify that I always know. I
18 said I try to keep -- keep -- keep my finger on
19 the pulse to some extent and know what expenses
20 are coming up. I didn't state that I always do.

21 Q. How do you -- how do you do that? How
22 do you keep the finger on what expenses are
23 coming up?

24 A. What in- -- the invoices that come in,
25 I keep a -- we try and keep a running total of

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1 what invoices are -- are coming in and what's
2 due.

3 Q. Do you do that through QuickBooks?

4 A. Somewhat. And --

5 Q. How else -- how else do you do that?
6 Do you keep a --

7 A. Well, I --

8 Q. -- notebook?

9 A. -- I typically see the invoices as they
10 come in.

11 Q. Okay. And as far as the accounts
12 receivable, you say you try to keep a -- I'll
13 say --

14 A. Yes.

15 Q. -- I'll use your words, keep a finger
16 on what the accounts receivable are. How do you
17 do that?

18 A. About -- I -- I generate a good bit of
19 the invoices that are out there so I know how --
20 how old most of them are.

21 Q. Do you -- QuickBooks allows you to make
22 all kinds of reports. Do you run an accounts
23 receivable report in QuickBooks?

24 A. I don't typically run one. It -- it
25 will, of course, but...

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1 Q. What are the accounts receivable of
2 Baxley Corp. today?

3 A. I would say probably 250- in accounts
4 receivable right now.

5 Q. Okay. And how much of those make up
6 the DOT that's out 90 days?

7 A. I -- I couldn't answer that. I
8 couldn't tell you that accurately.

9 Q. Do you have a guess as to what
10 percentage of the 250-?

11 A. I'm not going to guess.

12 Q. Okay. Again, I'm not asking specific.
13 I'm asking general.

14 A. Yeah.

15 Q. Is it half? Is it more than half?

16 A. Again, I'm not going to guess. I -- I
17 couldn't -- if I can't give you an accurate
18 answer, I'm just not.

19 Q. What are the monthly expenses of Baxley
20 Corp., LLC?

21 A. I mean, it's -- it -- depending on --
22 it varies considerably depending on what type of
23 projects we're on, what -- you know, some jobs
24 require a good bit of materials; some don't. I
25 just -- I couldn't answer that.

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1 Q. What is the range? What is the leanest
2 month you would have versus what you would expect
3 to be --

4 A. The leanest month?

5 Q. -- a heavy --

6 A. Something --

7 Q. Sorry. Let me -- versus what you would
8 expect to be a more heavy month?

9 A. It could be as low as 150-; could be as
10 much as -- as half a mil in a month depending on
11 the projects.

12 Q. Okay. How -- how much money does
13 Baxley Corp. have in the bank right now?

14 A. Less than 50-.

15 Q. How much is the payroll expense for
16 Baxley in a given month?

17 A. At this point, about a hundred thousand
18 a month.

19 Q. That's for the 20 or 25 folks that
20 you --

21 A. Yeah.

22 Q. -- talked about earlier? You -- are
23 you the person that knows the most about the
24 finances of the business?

25 A. I would say no.

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1 Q. Who would you say that is?

2 A. Ginger and Rudy. I can't answer that.

3 I don't know. I'm not certain.

4 Q. Well, who signs checks?

5 A. All three of us.

6 Q. Do you each sign different types of
7 checks?

8 A. Whoever's convenient to sign the
9 checks, signs the checks.

10 Q. No. But the office is in Ginger and
11 Brandon's home?

12 A. Yes.

13 Q. So is it safe to say Ginger's home
14 to --

15 A. Yes.

16 Q. -- sign checks more than you are?

17 A. Yes.

18 Q. Does she sign more checks than you do?

19 A. Yes.

20 Q. Does she sign more checks than Rudy?

21 A. Rudy signs a good -- Rudy signs quite a
22 bit as well.

23 Q. You don't sign many checks?

24 A. I sign some checks.

25 (KEITH EXHIBIT 15, Chart of Credit Card

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1 Charges, Capital One - Spark Business Account
2 Ending 9690, was marked for identification.)

3 BY MR. OLIVER:

4 Q. This next document is Exhibit 15. We
5 received credit card statements from you, from
6 the company --

7 A. Uh-huh.

8 Q. -- and looked at what the relative
9 charges were for different -- different credit
10 cards that --

11 A. Uh-huh.

12 Q. You -- have you seen the credit card
13 statements before?

14 A. Yes.

15 Q. Do you know that they show whose card
16 charged what?

17 A. Yes.

18 Q. So Martha Baxley has a card, right?

19 A. Uh-huh.

20 Q. And Dencil Harrison?

21 A. Yes.

22 Q. All the --

23 A. Which is no longer with us, but all of
24 these people had cards.

25 Q. Okay. And this -- and you can see this

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1 is from August of '18 through November 15th of
2 '18, right?

3 A. Uh-huh.

4 Q. The other people still with you, Sam
5 Bradford?

6 A. Yes.

7 Q. Rudy Baxley?

8 A. Yes.

9 Q. Dustin Johnson?

10 A. Yes.

11 Q. Jeff Jackson?

12 A. Yes.

13 Q. And, of course, you, Jonathan Keith,
14 right?

15 A. Yes.

16 Q. So this is how much was spent by -- on
17 each of these cards in a -- in these three
18 months, just looking at three months. Looks like
19 you don't use your card very much or you didn't
20 back then?

21 A. I didn't at that point.

22 Q. And this is -- for these three you have
23 15,000 in one month, 22,5-, almost 29,000. Would
24 you -- are these higher than typical, average?
25 What would you say about these amounts being

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1 charged on the company credit card in a given
2 month?

3 A. It can vary consider- -- it varies
4 considerably depending on the projects.

5 Q. Who --

6 A. These are -- a lot of these -- Dustin's
7 are materials and equipment maintenance. Sam's,
8 you know, \$10,000 -- \$10,000 worth of charges for
9 Sam would definitely be materials. You know, it
10 just -- it depends on what's going on in that
11 particular month.

12 Q. Okay.

13 A. They -- these are not, you know --
14 majority of these are not meal expenses and
15 things like that. These are -- you know, the
16 bigger ones are going to be some materials
17 typically --

18 Q. Okay.

19 A. -- or stone or --

20 Q. So there's nothing surprising about
21 these --

22 A. No.

23 Q. -- numbers to you?

24 A. No.

25 Q. Okay. Who is it that looks at the

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1 company credit card statements to verify that
2 charges are valid charges and should -- and were
3 authorized to be charged by the employee?

4 A. Martha or Rudy, I would assume.

5 Q. You don't as a regular course --

6 A. Not typically.

7 Q. -- get a copy of the credit card
8 statements?

9 A. I don't pay much atten- -- I don't
10 typically, no.

11 Q. Do you -- do you get a copy of them?

12 A. I have.

13 Q. Do you get them on a regular basis?

14 A. I have.

15 Q. When was the last time you looked at a
16 credit card statement for the company?

17 A. I don't recall. It's been months.

18 Q. Okay. Have you looked at one this
19 year?

20 A. Yes.

21 Q. In August, September, and October of
22 last year, were you looking regularly at credit
23 card statements?

24 A. No.

25 Q. Okay. Do you know whether you've ever

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1 seen the credit card statements for these months
2 for the company?

3 A. I do not.

4 Q. If -- if you were to look at -- or
5 someone -- or Ginger, someone -- one of the
6 managers were to look at a credit card statement
7 and saw a charge that was not authorized, what
8 would the company do?

9 A. I'm not aware that we've had any that
10 were not -- not authorized.

11 Q. So you can't remember an instance where
12 somebody charged something on a company credit
13 card that was not authorized?

14 A. I do not.

15 Q. Okay. Does the company have a policy
16 of what it would do if someone charged an
17 unauthorized charge on the company credit card?

18 A. I don't believe we do.

19 Q. Okay. As the manager what would you
20 do?

21 A. It would depend on the situation, on
22 who it -- who it was and -- and, you know -- too
23 many variables to give you that answer.

24 Q. If Sam Bradford's charges in October of
25 '18, which are 10,885.55, which you've just

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1 described as most likely materials --

2 A. Uh-huh.

3 Q. -- if you looked at it and found that
4 he had charged a family vacation on that, what
5 would you do?

6 A. Likely, I would let him go.

7 Q. Right. Because that would be --

8 A. That's -- would be embezzlement,
9 embezzling.

10 Q. Okay. I understand.

11 (KEITH EXHIBIT 16, Chart of Credit Card
12 Charges, Brandon Baxley, Capital One - Spark
13 Business Account Ending 9690, was marked for
14 identification.)

15 BY MR. OLIVER:

16 Q. So this is a chart for the same period
17 of time analyzing the charges made by Brandon
18 Baxley, Exhibit 16. Do these numbers surprise
19 you?

20 A. No.

21 Q. They are considerably higher, aren't
22 they?

23 A. They are.

24 Q. Is it a typical month for Brandon
25 Baxley to charge between 31- and \$44,000 on a

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1 credit -- company credit card?

2 A. It happens when -- depending on what
3 projects are going on there.

4 Q. It doesn't surprise you as the manager
5 to see that?

6 A. It does not.

7 Q. Would it cause you to want to look at
8 the credit card statements to verify that they
9 were authorized charges?

10 A. No, it would not.

11 Q. If you got a credit card statement from
12 Sam Bradford in the amount of 43,219.36, would
13 you look at that statement?

14 A. I likely would.

15 Q. Why wouldn't you look at it for
16 Brandon?

17 A. Sam is a foreman. It's a -- it's a
18 different -- you know, Sam as a foreman picking
19 something up, some counter sales materials or
20 something like that, is -- is not the same thing.

21 Q. What is it about Brandon's role --

22 A. This -- this card --

23 Q. -- that makes it different?

24 A. I mean, he would pay on accounts with
25 his card, you know, pay --

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1 Q. So during this three-month period --

2 A. -- make bigger material purchases.

3 Q. During this three-month period, these
4 seven employees charged \$67,040.92 and Brandon
5 charged 111,548.43 by himself. That doesn't seem
6 strange to you?

7 A. Does not.

8 Q. And you've never looked at the credit
9 card statements from these months, have you?

10 A. No.

11 Q. Let's look at them.

12 (KEITH EXHIBIT 17, Capital One Credit
13 Card Statements, August 16, 2018, through
14 November 15, 2018, was marked for
15 identification.)

16 BY MR. OLIVER:

17 Q. Show you what I'm marking as Exhibit
18 17, which are the statements from August,
19 September, and October, I believe, or are they
20 just -- let me see what I have here. These
21 are --

22 MR. OLIVER: What's the number?

23 MR. BEHR: Oh, it's 17.

24 MR. OLIVER: 17. Okay.

25 BY MR. OLIVER:

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1 Q. So we have here October of '18,
2 November, and December so not exactly these but
3 from the same time frame.

4 A. Uh-huh.

5 Q. If you turn to the third page, do you
6 see how they're broken down by name of the people
7 that have --

8 A. I do.

9 Q. -- a card? The first one's Martha
10 Baxley?

11 A. Yes.

12 Q. Sam -- then we have Brandon Baxley, Sam
13 Bradford, another Martha Baxley which start
14 transactions, so you have credits, then
15 transactions, and then Dencil Harrison.

16 A. Uh-huh.

17 Q. And then Brandon Baxley is on the
18 October one.

19 A. Uh-huh.

20 Q. I'm sorry. So this is -- so it's --
21 I'm sorry. This is -- the payment due date's
22 October 12th, but the -- the first one is August
23 16th, '18, through September 5th [sic], '18. The
24 third page we start Brandon Baxley is 5301.

25 MR. JANVIER: Sorry. George, where are

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1 you?

2 MR. OLIVER: The --

3 MR. BEHR: It's Page 3.

4 MR. OLIVER: Page 4 of the --

5 MR. BEHR: Oh, 4.

6 MR. OLIVER: -- the one that says,
7 payment due date, October 12th.

8 MR. BEHR: Oh, wait a minute. I
9 thought that -- Page 4.

10 MR. OLIVER: Yeah.

11 MR. BEHR: Sorry.

12 MR. OLIVER: Sorry.

13 BY MR. OLIVER:

14 Q. Would you expect an employee to pay
15 \$348.98 to Seaboard Wine on the company credit
16 card?

17 A. This was what month?

18 Q. August 31st.

19 A. I don't have an explanation.

20 Q. There are on that same page two other
21 charges to Seaboard Wine, one for 216.84 and one
22 for 153.99 on September 5th and 6th, also
23 September 1st, 52.86 at the ABC store in Wake
24 County. Any explanation for that?

25 A. No.

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1 Q. Would you expect an employee to charge
2 \$3,135 to a resort at Turks and Caicos on the
3 company card?

4 A. Would I expect?

5 Q. Yes. Does it surprise you to see that
6 on Brandon's charges?

7 A. It's the first I've seen it.

8 Q. Is that something you would expect an
9 employee to charge on the company card?

10 A. No.

11 Q. Would you expect the com- -- the
12 company card to pay for Netflix charges?

13 A. No.

14 Q. Would you expect the company to pay for
15 groceries for a company -- for an employee?

16 A. We pay for groceries all the time. We
17 have crews that are out in the field who
18 oftentimes cook in the field. We do -- you know,
19 groceries is a common charge.

20 Q. You know what Coquette of Raleigh is?

21 A. I do not.

22 Q. You know why Brandon charged \$130 to
23 that on September 2nd?

24 A. I do not.

25 Q. Do you see as you look at this all the

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1 different food items that are charged?

2 A. Yes.

3 Q. What is Soccer Shots?

4 A. What is what?

5 Q. Soccer Shots.

6 A. I do not know.

7 Q. Is that something you'd want to ask an
8 employee about if you saw a hundred dollar charge
9 on the company card?

10 A. Possibly.

11 Q. If you don't know what it is, would you
12 like to know what it is and find out from the
13 employee?

14 A. Sure.

15 Q. Go to the next series of state- -- the
16 next statement, which says, payment due date,
17 November 12th, 2018. Would you expect the
18 company to pay for his medical expenses on the
19 company credit card?

20 MR. WALLER: Are you looking at a
21 specific page now or --

22 MR. OLIVER: I am.

23 MR. WALLER: Show him.

24 BY MR. OLIVER:

25 Q. I'm on -- Page 4 of 8 is what it says

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1 at the top right. It's the -- it's actually the
2 fifth page of the --

3 MR. BEHR: You guys Bates numbered
4 them, Ben, so if you look at the bottom, it's
5 992, I think --

6 MR. OLIVER: Okay. There you go.
7 Thank you.

8 BY MR. OLIVER:

9 Q. Would you expect WakeMed Outpatient to
10 be something you would see on a company credit
11 card for an employee?

12 A. I don't know what that is. I don't
13 know if -- I don't know who it is.

14 Q. You didn't ask Brandon why he charged
15 that, did you?

16 A. I did not.

17 Q. What about gooutdoorsflorida.com, do
18 you know what that is?

19 A. I do not.

20 Q. Or charges in Panama City, Florida, do
21 you know why those would be on the company credit
22 card?

23 A. What month was this?

24 Q. September of 2018.

25 A. I was in Florida, throughout Florida

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1 after Florence and I believe Brandon was as well.

2 Q. For company business?

3 A. Looking at -- on company business
4 looking for -- looking at or for work in that
5 area.

6 Q. Okay. Yeah, there are a lot of charges
7 in Florida, so that would -- that would make
8 sense to you, wouldn't it?

9 A. Yeah.

10 Q. More charges to Seaboard Wine, Netflix.
11 Do you know how those items were expensed on the
12 company books?

13 A. I don't recall.

14 Q. Do you know whether Brandon paid the
15 company back for any of those charges?

16 A. I'm not aware.

17 Q. Going to the next one on -- starting on
18 Page 4, which is Bates stamped 1000, do you know
19 why Brandon would have charged \$536.43 to
20 Nordstrom on the company card?

21 A. No.

22 Q. Or why it would be paying his Hulu
23 expense?

24 A. Likely an oversight, but I do not.

25 Q. Why do you say it's an oversight?

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1 A. I don't think he would intend to pay
2 his Hulu expense on -- on -- with the company
3 card. It's easy to pick up the wrong card.

4 Q. Does he have another card?

5 A. I don't know what he -- I don't know
6 what cards he has, if he has a personal one or
7 not, but I can see where that could happen.

8 Q. When you pay for meals when you're on a
9 job, does it tend to be fast food?

10 A. Sometimes it's fast food. Sometimes we
11 entertain potential clients. You know, sometimes
12 when we have meetings with -- with our foremen
13 and whatnot, they're -- you know, a hu- -- a big
14 range.

15 Q. On this same page, 3 of 9, Bates Stamp
16 1000, there's an AT&T bill pay of \$690.18. Do
17 you know what that would be for?

18 A. AT&T bill pay?

19 Q. Uh-huh.

20 A. It's likely the phone bill.

21 Q. The phone bill for the company?

22 A. For the company, correct.

23 Q. Is it through AT&T?

24 A. It is.

25 Q. Safe to say nobody at the company is

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1 reviewing these charges done by Brandon Baxley?

2 A. I can't answer that. I don't know.

3 Q. If you had seen those sort of charges
4 done by one of the other employees that has a
5 card, would you let that person go?

6 A. I don't see a problem with most of
7 these charges and it would be in -- we would
8 handle any -- any type of situation like that on
9 a case-by-case basis.

10 Q. Did you handle Brandon's on a
11 case-by-case basis?

12 A. I have not handled Brandon's.

13 Q. Did anyone with the company handle
14 Brandon's?

15 A. I know that I have not. I can only
16 speak for myself.

17 Q. You're here to speak on behalf of the
18 company, aren't you?

19 A. Yes.

20 Q. Do you know whether anybody --

21 A. I'm not aware of -- that anyone else
22 has.

23 Q. Okay. What is Baxley Corporation, LLC,
24 that was formed in Delaware? What do you know
25 about that?

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1 A. I do not.

2 Q. Were you aware that there is one in
3 Delaware?

4 A. I am not.

5 Q. Are you associated with that company in
6 any way?

7 A. I am not.

8 (KEITH EXHIBIT 18, State of Delaware
9 Limited Liability Company Certificate of
10 Formation, Baxley Corporation, August 7, 2015,
11 was marked for identification.)

12 BY MR. OLIVER:

13 Q. I'll show you what's marked Exhibit 18
14 just to make sure you don't know anything about
15 it. Have you ever seen this before?

16 A. I have not.

17 Q. What do you know about Baxley
18 Construction?

19 A. I -- I don't.

20 Q. Did it merge with Baxley Corp.?

21 A. Not to my knowledge. I believe Baxley
22 Construction is Rudy's business, a home builders
23 business. I don't -- I don't have any
24 familiarity with it whatsoever.

25 Q. You've never heard of any merger

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1 between Baxley --

2 A. No, I have not.

3 Q. Let me just make sure I finish.

4 A. Sorry.

5 Q. -- between Baxley Construction and
6 Baxley Corp., LLC?

7 A. I have not.

8 (KEITH EXHIBIT 19, E-mail Message from
9 Brandon Baxley to Jonathan Keith, January 23,
10 2018, Subject: Merger Notice, with Attachment,
11 was marked for identification.)

12 BY MR. OLIVER:

13 Q. All right. This is Exhibit 19. I'll
14 ask you if this refreshes your recollection.
15 It's an e-mail from Brandon to you January 23rd
16 of 2018. It attaches some merger documents.

17 A. I don't remember this at all.

18 Q. Does it say -- it's dated January 18th,
19 2016, re: Baxley Construction/Baxley Corporation
20 purchase and merger agreement. Pursuant to the
21 terms of the merger and purchase agreement
22 effective January 18, 2016, all assets,
23 including, but not limited to, materials,
24 property, equipment, licenses, contracts,
25 immediately become the property of Baxley

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1 Corporation.

2 A. I don't recall seeing this.

3 Q. Did you receive the e-mail that is the
4 first page of Exhibit 19?

5 A. Did I rec- -- did it -- did I receive
6 it?

7 Q. Yes. Was it sent to you by Brandon on
8 January 23rd of 2018?

9 A. It appears that it was, but I don't
10 recall opening -- I don't recall seeing this.

11 Q. Was Brandon the sole member of Baxley
12 Corp., LLC, when it was formed?

13 A. Not to my knowledge, no.

14 Q. Was that a no or you don't know?

15 A. That's a no.

16 Q. Do you know why he would have
17 represented himself as such to the IRS in 2016?

18 A. I was not -- in 2016 I was an
19 estimator.

20 Q. Okay. This --

21 A. I wouldn't have been privy to any of
22 that --

23 Q. This is --

24 A. -- and cannot answer it.

25 Q. -- June 1st of 2016. I'm assuming this

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1 is one of the company records, but see if you've
2 ever seen it before.

3 A. I have not seen it before.

4 Q. Do you see where it says in the middle
5 of the page on the left side, Baxley Corporation,
6 Brandon Baxley, sole member?

7 A. I do.

8 Q. And it's assigning the employer
9 identification number.

10 A. Uh-huh.

11 Q. This notice was dated 5/17/16, wasn't
12 it?

13 A. It is.

14 Q. Do you know -- do you know when Brandon
15 stopped being the sole member of Baxley
16 Corporation?

17 A. I do not. I don't know that he was.

18 Q. You've seen -- you -- you have access
19 to sign checks on behalf of Baxley Corp., LLC,
20 don't you?

21 A. Yes.

22 Q. Do you know when Baxley Corporation
23 started business?

24 A. 2016.

25 Q. Right about the time it got its

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1 employee identi- -- employer identification
2 number in --

3 A. Yes.

4 Q. -- May of '16?

5 A. Yes. Yes.

6 Q. And you started right after that,
7 didn't you?

8 A. Yes.

9 (KEITH EXHIBIT 20, IRS Employer
10 Identification Number Letter, 5/17/2016, was
11 marked for identification.)

12 BY MR. OLIVER:

13 Q. As a manager do you have access to the
14 bank records of the company?

15 A. Yes.

16 Q. And as the manager did you assist in
17 compiling information to send to my office in
18 response to the request?

19 A. Yes.

20 (KEITH EXHIBIT 21, Bank of America Bank
21 Checking Account Statement, May 31, 2016, to May
22 31, 2016, was marked for identification.)

23 BY MR. OLIVER:

24 Q. I'm going to show you something marked
25 as Exhibit 21. At the bottom it says,

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1 BANA_Baxley0001. I believe this is the first
2 bank account statement for Baxley Corp., LLC.
3 See the beginning balance was zero?

4 A. Yes.

5 Q. And this was in May of 2016. Is that
6 when you understand the bank account would have
7 been opened?

8 A. Yes.

9 Q. And who was the member/manager when
10 this was opened?

11 A. I didn't open the account. I couldn't
12 tell you. Who was the member -- member/manager?

13 Q. Yeah, when the company started, when
14 the bank account was opened.

15 A. It would have been Ginger, Martha.

16 Q. Okay. No one else was a member at that
17 time?

18 A. Again, at that time, my role was as
19 an -- as an estimator and project manager. I
20 wasn't privy to any of this.

21 Q. You said it was Ginger. Was anyone
22 else a member at that time?

23 A. I do not know.

24 Q. Well, how do you know it was Ginger?

25 A. I -- I believe my answer was I would

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1 assume it was Ginger, but it...

2 (KEITH EXHIBIT 22, Bank of America
3 Signature Card and Account Opening Documents,
4 April 4, 2019, was marked for identification.)

5 BY MR. OLIVER:

6 Q. Show you what's been marked as Exhibit
7 22. This is the opening of the account signature
8 card with Bank of America.

9 A. Uh-huh.

10 Q. You see it lists who the three
11 authorized persons are as signer on the first
12 page?

13 A. I do.

14 Q. And that's Rudy, Brandon, and yourself?

15 A. Yes.

16 Q. So were you involved in the company
17 when it first started?

18 A. I guess, yes.

19 Q. This is dated April 4th of -- I'm
20 sorry. This is dated April 4th of 2019 and it is
21 signed by whom on the third page?

22 A. That is Brandon's signature.

23 Q. Okay. Why was Brandon signing on
24 behalf of the company on April 4th of 2019?

25 A. I'm not sure.

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1 Q. On the next page -- I'm sorry. It's
2 Page 4 of this exhibit. Down at the bottom it's
3 BANA_Baxley-930. Do you see that on May 31st of
4 2016, Brandon has signed as member/manager of
5 Baxley Corporation, LLC?

6 A. I do see it.

7 Q. And then, again, on the next page
8 that's his signature?

9 A. Yes.

10 Q. Then on the page after that for a
11 different account, also May 31st, '16, I believe?
12 Do you see his signature there on the following
13 page?

14 A. Yes.

15 Q. And then on -- so you don't know when
16 he stopped being the member/manager of Baxley
17 Corp.?

18 A. I don't know when he stopped signing as
19 member/manager on -- this -- I have not seen --
20 seen this before.

21 Q. Do you think he -- are you saying he
22 was not --

23 A. See, this --

24 Q. -- the member/manager when he signed
25 it?

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1 A. Not to my knowledge, no. He had
2 resigned as member/manager.

3 Q. In May of '16?

4 A. Uh-huh. May of '16, no.

5 Q. So do you see the ones that are dated
6 May 31st of '16 where he signed as
7 member/manager?

8 A. I do.

9 Q. And you were referring to the one in
10 April of '19. You don't know why he would have
11 signed then, right?

12 A. Yes. Correct.

13 Q. You see on the first page of Exhibit
14 22, this is where it's adding you, I suppose, as
15 a signer on the account?

16 A. What page?

17 Q. The first page.

18 A. Yes.

19 Q. Were you aware that you were being
20 added as a signer?

21 A. Yes.

22 Q. Do you see on the top of that page
23 where it says, state where
24 organized/registered/principal place of business,
25 Delaware, DE?

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1 A. I do.

2 Q. Is the company organized in Delaware?

3 A. Not to my knowledge.

4 Q. Is there a different company in
5 Delaware called this Baxley Corporation, LLC?

6 A. No.

7 Q. Do you remember signing the signature
8 card with Bank of America that would have allowed
9 you to sign on behalf of the company starting in
10 April of 2019?

11 A. Yes.

12 Q. Do you remember who else signed it?

13 A. Rudy.

14 Q. Anyone else?

15 A. I'm not aware.

16 Q. Did you read it before you signed it?

17 A. Probably not.

18 Q. Didn't read any part of it? Will
19 you -- would you have read the part where your
20 name was?

21 A. I would -- yes, I would assume so.

22 (KEITH EXHIBIT 23, Business Signature
23 Card with Substitute Form W-9, 4/4/19, was marked
24 for identification.)

25 BY MR. OLIVER:

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1 Q. Okay. This is Exhibit 23. Do you see
2 where you signed there as Jonathan Keith?

3 A. I do.

4 Q. You see what's right above that, don't
5 you?

6 A. I do.

7 Q. That's Brandon Baxley?

8 A. Uh-huh.

9 Q. You would have seen that, wouldn't you?

10 A. I would assume so, yes.

11 Q. So this is April 4th of '19. Why is
12 Brandon authorized to sign checks for the company
13 as of that date?

14 A. I do not know.

15 Q. The next page of this goes back to May
16 of '16 and it shows Brandon Baxley signing
17 something else as member/manager on 5/31/16. Do
18 you see that?

19 A. I do.

20 Q. On the next page he actually crossed
21 through the word director and wrote,
22 member/manager, to make sure it was clear, did he
23 not?

24 A. Yes.

25 Q. You're aware that Commercial Holdings

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1 Corporation had a lawsuit against the company
2 that owned Nello's?

3 A. I was not privy to the -- those details
4 at -- I was an estimator --

5 Q. Right.

6 A. -- when this stuff went on.

7 Q. And that was settled in December of
8 '16, right?

9 A. I -- like I said, I don't know.

10 Q. So you're aware that it happened. I'm
11 not asking you details.

12 A. I have heard -- I have heard of it,
13 yes, but I don't know the details.

14 Q. Okay. Do you know why settlement
15 proceeds were paid from that lawsuit into Baxley
16 Corporation?

17 A. As I understand, there were loans by
18 Rudy into Baxley Corporation. The company had
19 had some -- some projects that didn't go well and
20 needed some cash and it was loaned to -- but
21 that's -- again, it's hearsay. I mean, I wasn't
22 part of that at the time.

23 Q. Okay. I'm really asking you more as a
24 member of Baxley Corp., LLC.

25 A. Uh-huh.

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1 Q. Do you remember how much money was paid
2 to Baxley Corp.?

3 A. I do not.

4 Q. But the only -- if you have any
5 explanation for it, it's only that Rudy had
6 loaned money to some -- one of Brandon's
7 companies, I guess? Is that what you're saying?

8 A. As to -- he had loaned the proceeds of
9 that to Baxley Corp. as I recall.

10 Q. Who had loaned proceeds of what?

11 A. Of what?

12 Q. No. Tell -- I -- you're using too many
13 pronouns. I'm confused.

14 A. Okay.

15 Q. Tell me -- tell me who he is.

16 A. Why don't you -- Rudy had loaned that
17 money to Baxley Corporation.

18 Q. He had loaned what money?

19 A. The proceeds of this lawsuit that
20 you're -- the -- that you mentioned.

21 Q. Okay. So you think --

22 A. Okay.

23 Q. -- the lawsuit was settled and the
24 money went to Baxley Corp. because Rudy at that
25 time was loaning money to Baxley Corp.?

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1 A. Something to that effect, yes --

2 Q. Okay.

3 A. -- my understanding. I need to take
4 another break as well.

5 Q. Yeah. Let's do it.

6 (Whereupon, there was a recess in the
7 proceedings from 10:54 a.m. to 10:59 a.m.)

8 BY MR. OLIVER:

9 Q. All right. Back on record. I believe
10 we were on Exhibit 23.

11 (KEITH EXHIBIT 24, Check Images,
12 February 1, 2019, to February 28, 2019, was
13 marked for identification.)

14 BY MR. OLIVER:

15 Q. All right. I'm going to show you
16 what's been marked as Exhibit 24. These are
17 check images from Baxley Corp. account at Bank of
18 America. I'd just ask you if you could look on
19 that first page and tell me if those signatures
20 are Brandon's signature on the checks.

21 A. Yes.

22 Q. And on the bottom right there's a check
23 to you --

24 A. Yes.

25 Q. -- for 1320. Is that his signature on

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1 your check?

2 A. Yes.

3 Q. So when I asked you earlier who signs
4 checks you gave me three names, but you didn't
5 give me Brandon. Does he continue to sign checks
6 for Baxley Corp.?

7 A. I'm not -- I don't know. I'm not
8 aware.

9 Q. This was in February of 2019.

10 A. Uh-huh.

11 Q. That was after you became manager,
12 right?

13 A. Right. There have been a good bit of
14 payroll checks that Rudy has signed as well.
15 I've signed some so...

16 Q. If you look through this one, this
17 exhibit, which is the check images from February
18 1st, 2019, to February 28th, 2019 --

19 A. Uh-huh.

20 Q. -- I don't think I see any signature
21 other than Brandon's. Do you?

22 A. I don't.

23 Q. I did notice on here two checks to Rudy
24 Baxley for \$3,000 each signed by Brandon. Do you
25 know what those would have been for?

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1 A. I do not.

2 Q. I see a check to R.J. Antonelli for
3 \$7500 signed by Brandon. Do you know what that's
4 for?

5 A. I do not.

6 Q. Were you aware that that was written at
7 the time it was written?

8 A. No.

9 Q. Were you aware that the checks to Rudy
10 were written at the time they were written?

11 A. No.

12 Q. Were you aware that any of these checks
13 were written at the time they were written other
14 than your paychecks?

15 A. I know payroll checks are written every
16 week.

17 Q. Are these all payroll checks?

18 A. I -- for one thing, I can't see them.

19 Q. Okay. A check to R.J. Antonelli would
20 not be a payroll check --

21 A. That would not --

22 Q. -- would it?

23 A. -- be a payroll check, no.

24 Q. Okay.

25 MR. JANVIER: George, I'm sorry. What

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1 page is that on?

2 MR. OLIVER: The R.J. check? Let me
3 see.

4 MR. BEHR: 2026.

5 MR. OLIVER: Up there at the top left
6 on --

7 MR. JANVIER: I see. The numbers --

8 MR. OLIVER: -- 2026.

9 MR. JANVIER: -- go across. Got it.

10 MR. OLIVER: Yeah.

11 MR. JANVIER: Okay.

12 MR. OLIVER: Yeah.

13 MR. JANVIER: Thanks.

14 MR. OLIVER: Uh-huh.

15 BY MR. OLIVER:

16 Q. Are you aware of the reason why the
17 company would have large transfers from its bank
18 account to another bank account in March of 2019?

19 A. No.

20 (KEITH EXHIBIT 25, Bank of America Bank
21 Statement, March 1, 2019, to March 31, 2019,
22 Account Ending 9348, was marked for
23 identification.)

24 BY MR. OLIVER:

25 Q. Exhibit 25 are the bank statements from

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1 the company account in March of 2019.

2 A. Yeah, I'm not sure what that's for.

3 Q. Which one are you referring to, which
4 page?

5 A. The online banking tran- -- bank
6 transfers on the first page so Page 3 of 26.

7 Q. Yeah.

8 A. Is that what you're referring to?

9 Q. I'm trying to catch up to you. Yes.

10 A. Yeah.

11 Q. So on March 4th of '19 there's a
12 \$30,000 transfer. You don't know what that was
13 for?

14 A. I do not.

15 Q. Or on the same day, another 18,000?

16 A. I do not.

17 Q. On the following day, 50,000?

18 A. I do not.

19 Q. On the 7th, 50,000?

20 A. No.

21 Q. And the 8th, 15,000?

22 A. No.

23 Q. And then on the 13th, 20,000? I mean,
24 just -- there's 400 and -- these are -- these are
25 actually deposits, right?

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1 A. It appears.

2 Q. These are deposits into the account.

3 How many bank accounts did the company have at
4 this time?

5 A. Bank of America.

6 Q. Just the one?

7 A. Just one.

8 Q. And this bank account ends in Account
9 Number 9348, right? That's the main account --
10 or the one account that you're aware of?

11 A. Yes. Yes.

12 Q. Do you see that on March 29th of '19,
13 there was an online banking transfer from Account
14 9364 for a hundred thousand? Do you see that
15 there?

16 A. I do.

17 Q. And you don't know what Account 9364
18 is?

19 A. I do not.

20 Q. There was another transfer on that --
21 from that same account that same day for another
22 40,000.

23 A. I do not.

24 Q. Starting on Page 17 of 28, there are
25 the check images. I don't see any signature

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1 other than Brandon's with the exception of on
2 Page 20 of 28, looks like there's a Martha. Do
3 you agree?

4 A. Yes.

5 Q. Do you see -- on the last page, 28 of
6 28, you see some of these transfers. Do you see
7 the last two on the bottom of that page? The
8 first one says, Check Number 3489, amount
9 25,000 --

10 A. Uh-huh.

11 Q. -- signed by Brandon?

12 A. Yes.

13 Q. And it says, transfer to Baxley
14 Corporation?

15 A. It does.

16 Q. So Baxley Corporation only had one bank
17 account, right?

18 A. To my knowledge.

19 Q. So where was that money going?

20 A. I don't know.

21 (KEITH EXHIBIT 26, Bank of America Bank
22 Statement, March 1, 2019, to March 31, 2019,
23 Account Ending 9364, was marked for
24 identification.)

25 BY MR. OLIVER:

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1 Q. I'll show you what we've marked as
2 Exhibit 26. These are bank statements from March
3 of 2019 to the Baxley Corp. account. Have you
4 seen this before?

5 A. I'm not sure.

6 Q. Do you regularly receive bank
7 statements from the company accounts?

8 A. No.

9 Q. Do you remember the last time you saw
10 one?

11 A. I couldn't tell you -- I couldn't tell
12 you when that was.

13 Q. It looks like the company deposited
14 \$493,000 in this month and
15 withdrew/transferred/debited \$460,000, some of
16 them very large chunks like the last thing we
17 saw.

18 A. Uh-huh.

19 Q. If you go to Page 4 of 6, which is
20 BANA_Baxley-778, you see a 3/29/19 online banking
21 transfer for a hundred thousand dollars.

22 A. Yes.

23 Q. Do you know what that's for?

24 A. I do not.

25 Q. Do you know what any of these transfers

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1 are for?

2 A. I do not.

3 Q. What is Baxley Leasing, LLC?

4 A. What is Baxley Leasing? Baxley Leasing
5 owns the equipment that we use and leases it to
6 Baxley Corporation. Fairly typical in
7 construction.

8 Q. Who are the owners of Baxley Leasing,
9 LLC?

10 A. Martha solely as I understand.

11 Q. Has Brandon ever been an owner or
12 member of that?

13 A. No, not to my knowledge.

14 Q. Who are the managers of Baxley Leasing,
15 LLC?

16 A. I -- I'm not a part of Baxley Leasing
17 other than dealing with the equipment and then,
18 you know -- I'm not -- not privy. I don't work
19 for Baxley Leasing and I'm not a member and I
20 don't have any information on it.

21 Q. How much is the lease paid from Baxley
22 Corp., LLC, to Baxley Leasing every month?

23 A. It's less than -- it's less than our --
24 our United Rentals, which is probably -- runs
25 between 40- and 50- a month.

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1 Q. So United Rentals is 40- to 50- a
2 month.

3 A. And that's -- you know, that's -- it
4 can be -- depending on the project can be much
5 bigger, some less, much --

6 Q. But Baxley Leasing is a set amount,
7 though, isn't it?

8 A. Fairly -- fairly set, yes.

9 Q. And what's the ballpark range of that
10 every month?

11 A. I'm not certain.

12 Q. And you say less than 40- to 50- a
13 month. That could mean \$1; it could mean 30,000.

14 A. Yeah. I --

15 Q. Is there a range?

16 A. I don't know. I -- I'm not going to
17 guess. I don't have -- I don't have that
18 information.

19 Q. As part of the information given to us
20 from the request by the company, we received some
21 financial information.

22 (KEITH EXHIBIT 27, Baxley Corporation
23 Profit and Loss Statement, January - December
24 2017 and Balance Sheet, December 31, 2017, was
25 marked for identification.)

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1 BY MR. OLIVER:

2 Q. And I'm going to mark this Exhibit 27.

3 It's a -- first page is a profit and loss for

4 Baxley Corp. in 2017. Is the company on

5 cash-based or accrual accounting?

6 A. Cash based.

7 Q. So behind the profit and loss is a

8 balance sheet as of 12/31/17.

9 A. Uh-huh.

10 Q. How did the company have negative

11 \$50,000 in its account at the end of the year in

12 2017?

13 A. I -- I don't know.

14 Q. And this was before you became the

15 manager?

16 A. Correct. It is before and I -- I -- I

17 do not know.

18 Q. So you produced this, I think -- the

19 company produced this. Did you have any part in

20 generating this?

21 A. Did I have any part in generating --

22 Q. Either of the reports, the profit and

23 loss or the balance sheet as of 12/31/17 that

24 makes up Exhibit 27.

25 A. I believe -- I'm not sure who did.

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1 Q. And I'm just asking if you had any role
2 in it.

3 A. No.

4 Q. When you searched the company records
5 for what we asked for, was this something that
6 already existed that you just made a copy of?

7 A. It may have. I -- I don't recall.

8 (KEITH EXHIBIT 28, Baxley Corporation
9 Balance Sheet, December 31, 2018, was marked for
10 identification.)

11 BY MR. OLIVER:

12 Q. I also have the 2018 information --
13 I'll mark it as Exhibit 28. -- 2018 balance
14 sheet that was produced to us from the company.
15 You were the manager as of that date, weren't
16 you?

17 A. Uh-huh.

18 Q. And is this information accurate to the
19 best of your knowledge?

20 A. It is.

21 Q. It was accurate as of 12/31/18?

22 A. I believe so.

23 Q. How did the company have negative
24 \$147,000 in the bank account at the end of the
25 year in 2018?

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1 A. I -- I'm not certain.

2 Q. Did the company have 147,000 negative
3 balance at the end of 2018?

4 A. I don't know right -- I do not know.

5 Q. Did you help generate this report?

6 A. I don't believe so, no.

7 Q. Who did?

8 A. I'm not sure.

9 Q. Is it accurate that at the end of 2018,
10 the only liabilities owed to anyone by the
11 company was \$185.75?

12 A. On this date I'm not certain. I'm not
13 cer- -- sure what had been collected or what had
14 not.

15 Q. Do you -- do you remember a time since
16 you've been manager that the company only owed
17 \$185.75 to all of its --

18 A. Was only owed or only owed?

19 Q. So these are liabilities.

20 A. Right.

21 Q. Okay. So that would be what the
22 company owes to other people. You think it's
23 accurate that the company only owed \$185.75 to
24 other people as of that date?

25 A. I'm -- I'm not certain. I don't know.

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1 Q. Does it sound right to you? Have you
2 ever had a time where the company had paid
3 everything owed to everyone except \$185.75?

4 A. We have typically paid our bills and
5 stand currently and -- and have tried -- I don't
6 think it's inaccurate.

7 Q. Do you remember a time when the company
8 had negative \$147,430.47 in its bank accounts?

9 A. I don't recall, no.

10 Q. You'd remember that, wouldn't you?

11 A. Yeah, I would remember that I would
12 think.

13 Q. So do you think this is an accurate
14 report or an inaccurate report?

15 A. I don't know.

16 (KEITH EXHIBIT 29, Baxley Corporation
17 Profit and Loss, January - December 2018, was
18 marked for identification.)

19 BY MR. OLIVER:

20 Q. Exhibit 29 is a 2018 profit and loss
21 that was produced by the company. Have you seen
22 this before?

23 A. I believe so.

24 Q. Where are the payments to officers
25 listed?

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1 A. I'm not sure.

2 Q. Where is the payroll listed?

3 A. I don't know.

4 Q. Did you have 20 to 25 people in 2018
5 working for Baxley Corp.?

6 A. End of 2018, probably more like 12 to
7 15.

8 Q. Would you expect to see payroll numbers
9 on this profit and loss?

10 A. Sure.

11 Q. Do you see them?

12 A. I do not.

13 Q. Does Baxley Corp. own its vehicles or
14 are they owned by Baxley Leasing, LLC?

15 A. Baxley Leasing owns the vehicles with
16 the exception of a -- the -- that old BMW and an
17 '08 Toyota and there's a -- an excavator that's
18 financed in Baxley Corp.'s name.

19 Q. Did Brandon Baxley have authority to --
20 to buy and sell vehicles for Baxley Corp. after
21 he resigned as manager?

22 A. For Baxley Corp.?

23 Q. Yeah.

24 A. Baxley Corp. doesn't own any vehicles.

25 Q. Doesn't own any trucks?

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1 A. No, does not. They're all under Baxley
2 Leasing --

3 Q. Okay.

4 A. -- all owned by Baxley Leasing.

5 Q. Have you ever applied for bonds on
6 behalf of Baxley Corp., LLC?

7 A. Have I? Yes.

8 Q. Has Brandon?

9 A. Yes.

10 Q. Has he applied for bonds on behalf of
11 Baxley Corp., LLC, since he resigned as manager?

12 A. Yes, I would assume.

13 Q. Why would he apply for bonds on behalf
14 of the company? Is he authorized to do that?

15 A. We're a small company. We --
16 whatever -- I've applied for them on -- on my
17 jobs and he's applied for some as well.

18 Q. When you apply for those, do you give
19 your personal financial information?

20 A. No.

21 Q. Whose personal financial information do
22 you -- do you give to get the bonds?

23 A. I mean, at this point, everything --
24 our agent has everything on file.

25 Q. Back in March of '19, whose personal

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1 financial information was being given to get
2 bonds on behalf of the company?

3 A. I would assume Martha's.

4 Q. Not Brandon's?

5 A. I wouldn't think so, no. What dates?

6 Q. March of 2019.

7 A. Martha's, I would assume.

8 Q. But you don't know?

9 A. I don't know.

10 (KEITH EXHIBIT 30, E-mail String, March
11 11, 2019, and March 12, 2019, Subject: Bid Bond,
12 with Attachments, was marked for identification.)

13 BY MR. OLIVER:

14 Q. Okay. This is just Exhibit 30, a
15 series of e-mails about some bid bonds that were
16 being applied for. Looks like it was handled by
17 Brandon and then Brandon forwarded the
18 information to you?

19 A. Yeah.

20 Q. So on the fourth page of this exhibit,
21 which is InBox2019-661, do you see halfway down
22 the page -- or at the bottom of the page, Melanie
23 Airington with TriSure Insurance is saying,
24 Brandon, Selective has asked for some current
25 personal and corporate financials, please.

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1 You see that?

2 A. I do.

3 Q. Do you see that Brandon says, do you
4 have a form I could fill out?

5 A. I do.

6 Q. Do you know whether Brandon submitted
7 his own financials for that?

8 A. I do not.

9 Q. How many company meetings for Baxley
10 Corp. have you participated in?

11 A. Company meetings. I --

12 Q. Like corporate meetings for the LLC.

13 A. I don't recall.

14 Q. Do you recall any?

15 A. We have had numerous meetings. As far
16 as corporate meeting, I -- I don't recall.

17 Q. Do you remember ever having a meeting
18 of the managers that would have been documented
19 in minutes?

20 A. I just -- I'll say I don't recall.

21 Q. You haven't had any yearly meetings,
22 have you?

23 A. I don't recall being in any yearly
24 meetings since I've been asked to take this
25 different role so, no.

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1 Q. Okay. So you didn't keep any minutes
2 for any meetings?

3 A. No, I did not.

4 Q. Okay. Do you remember getting any
5 agendas for any meetings that people talked about
6 having?

7 A. I do not.

8 (KEITH EXHIBIT 31, E-mail Message from
9 Jonathan Keith to jonathan@baxleycorp.com,
10 February 15, 2019, Subject: Scan.pdf, with
11 Attachment, was marked for identification.)

12 BY MR. OLIVER:

13 Q. I'm going to show you what I marked
14 Exhibit 31. So this says you had a meeting with
15 Martha and Rudy and it says you kept the mean --
16 minutes, but I guess that's not accurate, right?

17 A. I -- I don't recall.

18 Q. Okay. So if you didn't -- don't recall
19 a meeting, you weren't the one to call it to
20 order, were you?

21 A. I would assume no.

22 Q. And you weren't the one to adjourn it?

23 A. (Shakes head).

24 Q. Is that a no?

25 A. That's a no.

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1 Q. Okay.

2 MR. OLIVER: All right. Let's take a
3 break. I think I'm done.

4 MR. BEHR: I just have a few questions,
5 but we can --

6 MR. OLIVER: Well, you can go ahead
7 and --

8 MR. BEHR: Let me --

9 MR. OLIVER: -- because I know he's on
10 a short time.

11 MR. BEHR: Yeah.

12 MR. OLIVER: He has to get back for
13 childcare.

14 EXAMINATION

15 BY MR. BEHR:

16 Q. Mr. Keith, my name is Brian Behr. I'm
17 a staff attorney with the Bankruptcy
18 Administrator's Office here. Thank you for
19 coming in today. I've just got a few follow-up
20 questions to Mr. Oliver's questions.

21 Starting off with Exhibit Number 3, if
22 you could go through your pile here and find
23 Exhibit Number 3. There you go. And this is
24 the -- do you recall Mr. Oliver bringing this
25 exhibit to your attention and reviewing it?

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1 A. Yes.

2 Q. All right. And this is an e-mail that
3 you sent to yourself on February the 15th, 2019.

4 A. Yes.

5 Q. And the attachment is a scan and --
6 it's two scans, actually, it appears, both of
7 which are corporate resolutions bearing
8 Mr. Baxley's signature on them or purportedly
9 Mr. Baxley's signature. Did you see Mr. Baxley
10 sign this?

11 A. I did not.

12 Q. All right. And did you ever sign this
13 document?

14 A. I don't recall.

15 Q. Why did you send this to yourself on
16 February the 15th, 2019?

17 A. I don't remember that either. I don't
18 know why it would have ended up in my personal
19 e-mail account. It was just a mistake.

20 Q. Well, it looks like these two documents
21 were scanned and then an attachment was
22 essentially attached to it.

23 A. Likely a mistake and it was just to get
24 it back into my company e- -- into my work
25 e-mail.

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1 Q. So then is it -- did you -- do you
2 recall scanning these documents on February 15th,
3 2019?

4 A. I do not.

5 Q. They don't bear your signature. Do you
6 recall whether these documents were signed prior
7 to February 15th, 2019?

8 A. I do not recall.

9 Q. All right. Did you review the
10 production by -- give me one moment -- by Baxley
11 Corp. prior to it being submitted to our office?

12 A. Did I review what?

13 Q. The production. Documents were
14 produced. Well, see if I can find it. Hold on.

15 MR. BEHR: I'm going to label this as
16 Exhibit Number 3- --

17 THE REPORTER: -2.

18 MR. BEHR: -- -2.

19 MR. WALLER: 32.

20 MR. BEHR: All right.

21 (KEITH EXHIBIT 32, Baxley Corporation
22 LLC Corporate Resolution, was marked for
23 identification.)

24 BY MR. BEHR:

25 Q. Have you seen that document before?

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1 A. Yes.

2 Q. And do you recall when you signed that
3 document?

4 A. I do not.

5 Q. Are you certain that you signed it on
6 the date that it purports to have been signed?

7 A. I don't remember signing anything. Why
8 I -- no reason that I would have signed it
9 another date.

10 Q. Why did you have a version that wasn't
11 signed?

12 A. Why did I have a version -- I probably
13 had not signed it yet and scanned it back in. I
14 have no idea.

15 Q. I understand. But -- but you're
16 sending yourself a -- that in August of 2019.

17 MR. OLIVER: February.

18 A. I may have --

19 Q. Sorry. February -- I'm sorry.
20 February 16th of 2019.

21 A. Yeah. I don't know.

22 Q. Okay. You're not certain that that --
23 that wasn't backdated or anything along those
24 lines?

25 A. No, nothing -- no.

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1 Q. Mr. Oliver asked you some questions
2 about the business that Baxley Corporation was in
3 and it's fairly lengthy and involved contracting
4 and cleanup and things like that. Was there any
5 other sort of business that Baxley Corporation,
6 LLC, has been in since you started working there
7 in 2016?

8 A. Since I started working here, yes.

9 Q. What other business has it been
10 involved in?

11 A. There was the -- there was a vehicle
12 thing they invest- -- had -- had been some money
13 invested in some -- some cars with a used car
14 dealer in Southern Pines, maybe.

15 Q. Was that East Coast Auto Sales?

16 A. Yeah.

17 Q. And what's your level of familiarity --
18 excuse me. What is your level of familiarity
19 with that business arrangement?

20 A. Lost money. The -- all of the stuff
21 was sold except for the Sequoia and the -- which
22 is like a '08, and they have the -- I'm not sure
23 what -- what year that old BMW is.

24 Q. So that BMW was part of that East Coast
25 Auto Sales?

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1 A. Yeah.

2 Q. Okay. And was Baxley Corporation an
3 investor in that?

4 A. Yes. I'm not sure how it was -- you
5 know, at the time I was in a different role, but
6 I don't know if they were buying the cars
7 directly, you know, or if they were an investor
8 in East Coast Auto Sales. I'm not quite sure how
9 that worked.

10 Q. Okay. So two of the vehicles made
11 their way into Baxley Corporation, LLC --

12 A. Yeah.

13 Q. -- a Sequoia and a BMW?

14 A. I believe they all did is my
15 understanding, but they've all been sold with the
16 exception of these two.

17 Q. All right. And with respect to -- you
18 mentioned much earlier that -- and I'm going to
19 paraphrase and correct me if -- if I'm -- if I'm
20 mischaracterizing. You said that somebody had
21 asked Brandon to step down and that was the
22 reason why he was no longer the member/manager.

23 A. I don't remember --

24 Q. Okay.

25 A. -- that answer.

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1 Q. Let me -- let me -- I'll -- we'll start
2 fresh on that then. So do you know why Brandon
3 stepped down as member/manager in June of 2018?

4 A. I -- no. I have not --

5 Q. You didn't ask any questions?

6 A. It was too much -- too much stress on
7 him from other directions and asked if I could
8 step up.

9 Q. Okay. Was there any discussion about
10 potential liability the company might have if he
11 didn't step down?

12 A. I don't remember the conversations.
13 It's been a long time ago.

14 Q. Okay. Were you the only party to this
15 conversation with Brandon or was anybody else
16 involved?

17 A. I don't know what other conversations
18 were had.

19 Q. Okay. The food truck, you said -- you
20 mentioned you -- you ran a food truck in
21 Fayetteville; is that right?

22 A. Yeah.

23 Q. What was the name of that?

24 A. Biscuits and Burgers.

25 Q. What happened to the -- to the truck?

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1 A. It was sold at a loss. I don't think
2 we ever put it into -- like I said, that was a
3 false start kind of business and nothing --
4 nothing really happened. We never purchased --
5 the vehicle was never purchased from me and I
6 sold the vehicle.

7 Q. Okay.

8 A. It was never purchased by the business.

9 Q. All right. And --

10 A. We really -- we worked a couple of
11 events, lost our ass, and I got out of it on my
12 own.

13 Q. Okay. And was that Bicycle Burger?

14 A. I don't know much about Bicycle Burger.

15 Q. Is it -- is it a different --

16 A. It's a different --

17 Q. Okay. So Bicycle Burger was different?

18 A. Yes.

19 Q. Okay. And do you know who was involved
20 in Bicycle Burger?

21 A. Sam.

22 Q. And who else?

23 A. That's all I know.

24 Q. Do you know if Brandon was involved?

25 A. I'm not a party -- I'm not a party to

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1 it so I don't really know.

2 Q. Okay. And Sam is an employee of Baxley
3 Corporation; is that right?

4 A. He is now.

5 Q. Okay. And are you familiar with an
6 entity called Cue Burger?

7 A. No.

8 Q. Or food truck called Cue Burger?

9 A. No.

10 Q. Okay. Do you know who Steve Day is?

11 A. Yes.

12 Q. Who's Steve Day?

13 A. Steve Day owned Plates Kitchen.

14 Q. Okay. You say owned. Is he no longer
15 the owner?

16 A. I -- honestly, I'm not certain. I know
17 that he did own it at a certain -- at, you
18 know -- I don't know if he still owns it or
19 not --

20 Q. Okay. And how did you come --

21 A. -- when they were involved.

22 Q. Who was involved?

23 A. When -- just -- just ask your -- go
24 with your next question.

25 Q. Who was involved?

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1 A. I believe Brandon was involved.

2 Q. And how was Brandon involved?

3 A. They had -- Brandon and maybe Sam had
4 invested some money into Plates.

5 Q. Okay. And do you know if they're still
6 involved?

7 A. They are not.

8 Q. Okay. And how -- how did their
9 involvement end?

10 A. Lost money.

11 Q. I'm sorry. But did they buy an
12 interest in it?

13 A. I don't believe so. I don't think it
14 ever went -- again, I don't think it ever went
15 that far, but I wasn't a party to it and I don't
16 have any -- any real details on that tran- -- on
17 those transactions.

18 Q. Okay. And as far as you're aware, was
19 Baxley Corporation involved or was it Brandon
20 individually?

21 A. Baxley Corporation.

22 Q. Baxley Corp. Okay.

23 A. Uh-huh.

24 Q. Are you familiar with a -- the loan
25 that Steve Day may have made to Baxley

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1 Corporation?

2 A. I am not.

3 Q. Okay. Do you know when Baxley
4 Corporation ceased its involvement with Plates
5 Kitchen?

6 A. I don't know the dates.

7 Q. How would you characterize Baxley
8 Corporation, LLC? Is it an established business?
9 Is it a startup?

10 A. It is a -- I mean, it's a -- it's a new
11 and -- and -- it's a -- a young business -- young
12 and small -- young, small business.

13 Q. What is it -- tracking to be its gross
14 revenue for the year?

15 A. Right now I don't have -- we lost -- we
16 had four million worth of contracts that
17 disappeared. I don't know where we'll be at the
18 end of this year right now.

19 Q. Okay.

20 A. Just -- at this point, I'm chasing jobs
21 and buying -- buying some jobs, you know, to keep
22 our people together, to keep the team.

23 Q. When you say buying jobs, what do you
24 mean by that?

25 A. I mean -- buying jobs means taking

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1 projects at a very, very low margin.

2 Q. Okay. You mentioned that --

3 A. DOT is not putting much out at all

4 so...

5 Q. Okay. You mentioned that the funds --

6 it was your understanding that the funds received

7 from Commercial Holdings Corporation were a loan

8 from Rudolph Baxley; is that correct?

9 A. Yes.

10 Q. How did you come to learn that?

11 A. Just heard discussion of it. Between

12 who I couldn't tell you and the specifics I could

13 not --

14 Q. When did you learn --

15 A. -- at this point.

16 Q. -- about it?

17 A. I couldn't tell you.

18 Q. Okay. Did you learn about it over the

19 past few weeks?

20 A. No. I mean, just -- I had heard, you

21 know, way back.

22 Q. Okay.

23 A. I couldn't tell you if it was riding

24 down the road hearing a phone conversation or if

25 there was a discussion I was a part of. I

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1 don't -- I don't know.

2 Q. Did you have any discussions with
3 Brandon in advance of your testimony today about
4 how you were going to characterize certain
5 transactions?

6 A. No.

7 Q. Or how you should characterize certain
8 transactions?

9 A. No.

10 Q. What discussions -- strike that.
11 Did you have any discussions with
12 Brandon regarding your testimony today?

13 A. No.

14 Q. Did you have any discussions with
15 Rudolph Baxley about your testimony today?

16 A. Not -- nothing specific.

17 Q. Okay. If --

18 A. Just that this is what we're going to
19 be dealing with today.

20 Q. Okay. That you would be here but
21 not --

22 A. Yes.

23 Q. -- how to characterize certain things
24 or --

25 A. No.

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1 Q. -- anything like that? And the same
2 question as to Martha or I think she goes by
3 Ginger Baxley, did you have any discussions like
4 that with her?

5 A. No.

6 Q. All right. Did you have any
7 discussions with anyone else other than the --
8 and --

9 A. Just our counsel.

10 Q. All right. And you're speaking about
11 Mr. Waller and the --

12 A. Mr. Hendren.

13 Q. Mr. -- and -- and perhaps other members
14 of their firm?

15 A. Yes.

16 Q. No discussion -- and would you say that
17 the only party that represents you as to this
18 matter is the Hendren, Redwine & Malone firm?

19 A. Yes.

20 Q. Okay. Did you have any discussions
21 with Mr. Antonelli with respect to how to
22 characterize --

23 A. No.

24 Q. -- your testimony today or that you
25 would be testifying?

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1 A. No.

2 Q. No discussions at all with

3 Mr. Antonelli?

4 A. Uh-uh.

5 Q. Is that a no?

6 A. That's a no.

7 Q. When's the last time you spoke to

8 Mr. Antonelli?

9 A. Oh, I spoke with R.J. last -- I guess
10 the end of last week --

11 Q. Okay.

12 A. -- about an outstanding -- outstanding
13 invoice in accounts receivable.

14 Q. Does he do collection work for you?

15 A. Yes.

16 Q. I'm going to draw your attention to
17 Exhibit Number 5. If you'll turn to the last
18 page of that. Who -- who drafted these bios or
19 what I'm characterizing as a bio?

20 A. I'm not sure when they were drafted
21 or -- or -- or by who or at what point. I mean,
22 we -- no.

23 Q. Did you do it?

24 A. I have cut and pasted things from other
25 ones that you -- but this specific one that we're

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1 looking at today, I don't know when it was done
2 or by who.

3 Q. All right. Well, this initial
4 language, though, do you -- do you know who --

5 A. I -- again, I don't know.

6 Q. Okay. And what basis do you have for
7 testifying that Brandon is an ISA-certified
8 ard- -- arborist?

9 A. What basis?

10 Q. Yeah.

11 A. I was told that -- that he was an
12 ISA-certified arborist, I guess. Have I seen
13 his -- seen his credentials? No.

14 Q. Okay. Other than Bicycle Burger, other
15 than Plates Kitchen, other than East Coast Auto
16 Sales, and all the things that Mr. Oliver went
17 over with you about what Baxley Corporation, LLC,
18 does, was there any other lines of business that
19 Baxley Corp., LLC, does that haven't been
20 discussed today that you're aware of?

21 A. No.

22 Q. All right. The -- prior to the -- let
23 me ask that a different way.

24 The credit cards that y'all utilize
25 now -- Capital One, right? Is that correct?

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1 A. I guess, yeah.

2 Q. When were those issued?

3 A. I -- I'm not certain.

4 Q. Was it in -- let's see. How long have
5 you had one for?

6 A. I don't remember when I was issued the
7 card.

8 Q. Is -- does -- all right. So Bank of
9 America is where y'all bank at, right?

10 A. Yes.

11 Q. All right. Who all has debit cards for
12 that account?

13 A. I'm not certain who have -- foremen
14 have had cards that -- I don't know how many were
15 out there at one point. Our -- I would bet there
16 are quite a few. I know I --

17 Q. Do you know if Brandon --

18 A. Each --

19 Q. -- had a card?

20 A. Each of my foremen had one. I would
21 think Brandon had one.

22 Q. Do you know who had which one if I were
23 to give you the last four of the --

24 A. I do not.

25 Q. Okay. Have you ever reviewed the bank

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1 statements --

2 A. I have not.

3 Q. -- for these cards? Who would do that?

4 A. I'm not sure.

5 MR. BEHR: George, did we use the
6 minutes as an exhibit?

7 MR. OLIVER: Yes. It's the last
8 minutes.

9 MR. BEHR: Oh, there we go.

10 BY MR. BEHR:

11 Q. All right. If you could turn your
12 attention to Exhibit Number 31.

13 A. Yes.

14 Q. And you've never seen this document
15 before either?

16 A. I don't recall.

17 Q. And -- and you sent it to yourself on
18 February 15th, 2019?

19 A. Uh-huh.

20 Q. And as -- as far as you can recall, no
21 yearly meeting occurred on December the 22nd,
22 2018, at 12 p.m.?

23 A. We did have -- 22nd was -- we had a
24 get-together that day as well. We would have
25 been together. Maybe I just don't remember this.

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1 Q. What kind of a get-together?

2 A. We had a company Christmas party that
3 afternoon and were all present and we may have
4 had this that -- that morning and I don't recall.

5 Q. Where was the company Christmas party?

6 A. Where did we have the Christmas party?
7 I'm not sure.

8 Q. Was it at --

9 A. This says it was --

10 Q. -- somebody's house?

11 A. -- at Wake -- this says it was at Wake
12 Forest. I don't remember this. I don't know.

13 Q. So you don't recall that ever occurring
14 then?

15 A. Uh-uh.

16 Q. And you don't recall how it came into
17 your mailbox either then?

18 A. Do not.

19 Q. Or why you sent it to yourself on -- on
20 that date?

21 A. I do not.

22 Q. Does anybody else have access to your
23 iCloud account --

24 A. No.

25 Q. -- to where they could send you

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1 stuff?

2 A. No.

3 Q. You mentioned in -- well, what is
4 your -- your weekly salary? Is it 1400 a week,
5 you said, or 13-?

6 A. 1325.

7 Q. 1325. And then did I hear -- do I
8 recall you correctly saying that you may also
9 receive bonuses?

10 A. Yes.

11 Q. When's the last time you received a
12 bonus?

13 A. I'm not certain the dates, but I
14 believe there was one in the spring. It's
15 been -- after DOT's budget crunch it's been
16 thin.

17 Q. Okay.

18 A. I didn't take a paycheck when --

19 Q. What was the amount of the bonus?

20 A. -- withholding a paycheck -- I don't
21 recall.

22 Q. Who would have determined whether or
23 not you were going to get a bonus in the
24 spring?

25 A. Martha and Rudy.

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1 Q. And are all employees W-2 employees?

2 A. I believe so.

3 Q. All right. Is anybody paid cash?

4 A. Not that I know of, no.

5 Q. There's no contract employees or day
6 labor you may have where you pay cash?

7 A. No.

8 Q. Do you -- is there ever an instance
9 where you or a foreman or somebody else would
10 need to make large cash withdrawals from the bank
11 account?

12 A. Yes.

13 Q. And what sort of instance would that
14 be?

15 A. The cut and shove contracts, the storm
16 contracts --

17 Q. Uh-huh.

18 A. -- that --

19 Q. Yeah.

20 A. -- we've discussed, we go into areas
21 where there's no power, there's no credit cards,
22 no internet, none of that, so --

23 Q. Yeah.

24 A. -- we have to have cash on hand for
25 that and we bleed through it quickly.

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1 Q. And how much cash would you need?

2 A. To operate, you know -- we -- we put
3 three-man crews out on the road with that and --
4 and sometimes hire some subcontract crews as
5 well. We can bleed through 50,000 in -- you
6 know, in days.

7 Q. Uh-huh.

8 A. It's a lot of rooms, fuel, you know,
9 equipment having to be picked up, things being
10 trucked all over the state, you know.

11 Q. How often do you do that kind of
12 work?

13 A. When we have those cut and shove
14 contracts, we would -- you know, any -- any
15 storms.

16 Q. So you wouldn't anticipate a lot of
17 cash withdrawals outside of the storm season?

18 A. We have to have reserve on hand, you
19 know, when that -- when that happens so...

20 Q. Reserve cash or reserve money --

21 A. We have to have --

22 Q. -- in the bank account?

23 A. You -- you don't know when there's a
24 storm coming. I mean, we can't -- and you can't
25 just at the last minute go and -- and take out

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1 50,000 at the bank so...

2 Q. So there's a lot of walking-around
3 money then or -- I don't understand.

4 A. So -- I -- can you rephrase the
5 question for me, what you're asking?

6 Q. In reviewing the bank statements --

7 A. Uh-huh.

8 Q. -- there are a lot of cash
9 withdrawals --

10 A. Uh-huh.

11 Q. -- tied to certain accounts and I was
12 just wondering whether you knew why we might --

13 A. Without --

14 Q. -- see that.

15 A. -- seeing them specifically, I would
16 think that would explain a majority of them.

17 MR. BEHR: Actually, we don't need to
18 go into that. I'm good. I have no further
19 questions.

20 MR. OLIVER: I just have one more.

21 EXAMINATION

22 BY MR. OLIVER:

23 Q. So go back to your last exhibit,
24 Exhibit 31. Is this where -- the scan means it
25 was scanned, what, on a phone maybe? Is that

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1 what that -- what does that mean?

2 A. I -- I'm not sure what happened there,
3 if -- you know, I -- probably something --
4 something to do with my phone.

5 Q. Okay.

6 A. Yeah.

7 Q. Do you see that you sent that one to
8 yourself at the exact same time as Exhibit 3,
9 February 15th, 2019, at 6:32 p.m.?

10 A. Yeah.

11 Q. So why -- what were you doing that
12 day --

13 A. I'm not sure.

14 Q. -- that you were sending these
15 documents to yourself?

16 A. I don't remember. I don't recall.

17 Q. And Exhibit 3, again, are the unsigned
18 corporate resolutions.

19 A. Uh-huh.

20 Q. We've seen a lot of signatures with
21 Brandon's signature. That doesn't look the same,
22 does it? If you compare that to the bank -- the
23 checks that he signed, does that look like the
24 same signature to you?

25 MR. WALLER: What are you looking at

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1 now?

2 MR. OLIVER: I'm looking at Exhibit 3.

3 BY MR. OLIVER:

4 Q. Doesn't he just do like a big B with
5 swirls around it?

6 A. It doesn't look like his signature.

7 Q. And this third page --

8 A. It's not -- it's different.

9 Q. The third page of Exhibit 3 doesn't
10 look like his signature either, does it?

11 A. Uh-uh.

12 Q. Is that a no?

13 A. I -- I'm used to seeing the B.

14 Q. Okay. You don't ever remember seeing
15 Brandon sign pages like this Exhibit 3, do you?

16 A. I do not.

17 Q. And you don't know where you got this
18 on February 15th of 2019 --

19 A. I do not.

20 Q. -- at 6:32 in the afternoon? Okay.
21 And you don't know where you got Exhibit 31 on
22 February 15th, 2019, at 6:32 p.m.? You don't
23 know where that came from?

24 A. I don't.

25 MR. OLIVER: All right. Thank you.

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1 Those are all my questions.

2 THE WITNESS: Uh-huh.

3 (Whereupon, the deposition of JONATHAN

4 KEITH concluded at 11:45 a.m., October 29, 2019.)

5 (Read and sign requested.)

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1 DEPOSITION ERRATA SHEET

2 I, JONATHAN KEITH, do hereby certify that I
3 have read the foregoing transcript of my
4 testimony, and further certify that it is a true
5 and accurate record of my testimony (with the
6 exception of the corrections listed below):

7	Page	Line	Correction
8	_____	_____	_____
9	_____	_____	_____
10	_____	_____	_____
11	_____	_____	_____
12	_____	_____	_____
13	_____	_____	_____
14	_____	_____	_____

15

16 WITNESS my hand and seal on this, the _____
17 day of _____, 20____.

18

19 WITNESS SIGNATURE

20 This deposition was signed in my presence by
21 _____ on the ____ day of _____,
22 20____.

23

24 NOTARY PUBLIC
25 NOTARY NO. _____
My commission expires: _____

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1 CERTIFICATE OF COURT REPORTER

2 North Carolina

3 Wake County

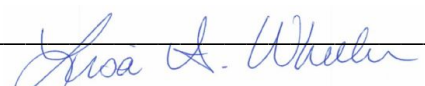
4 I, Lisa A. Wheeler, RPR, CRR, Notary Public
5 in and for the State of North Carolina, certify
6 that on October 29, 2019, in Raleigh, North
7 Carolina, JONATHAN KEITH, having produced
8 satisfactory evidence of identification and
9 having been first duly sworn by me to tell the
10 truth, thereupon testified as set forth in the
11 preceding 158 pages, exclusive of errata sheet
12 and signature page, if required, the examination
13 being reported by me verbatim and reduced to
14 typewritten form by me personally.

15 I further certify that I am not of counsel
16 or in the employ of the parties to this action;
17 that I am not related by blood nor connected by
18 marriage to the parties of this action; that I am
19 not interested in the outcome thereof; that the
20 foregoing is a true and accurate transcript of
21 said proceeding to the best of my ability and
22 understanding.

23 This the 12th day of November, 2019.

24

25



Lisa A. Wheeler, RPR, CRR
Notary Public, #19981350007

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